EQUITY SUMMONS

THE STATE OF ALABAMA)
ETOWAH COUNTY)
NO. 16,743

STATE OF ALABAMA, EX REL RICHMOND M. FLOWERS, as Attorney General of Alabama,
PLAINTIFF

VS.

MARVIN ROBINSON, ET ALS,
DEFENDANT

CIRCUIT COURT, ETOWAH COUNTY
IN EQUITY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to summon Wavelyn Halmes to appear and plead to, answer or demur, within thirty days from the service hereof to the bill of complaint as last amended, filed in Circuit Court of Etowah County, In Equity, by State of Alabama, Ex Rel, Richmond M. Flowers, as Attorney General of Alabama, against Marvin Robinson, et als, copy of amendment filed July 2, 1963, petition for peremptory or temporary injunction filed June 17, 1963, decree for temporary injunction rendered June 17, 1963, order to Register for issuance of writ of injunction made June 17, 1963, writ of injunction issued June 17, 1963, amendment to petition filed June 18, 1963, amendment to temporary injunction rendered June 18, 1963, amendment to temporary injunction nunc pro tunc, rendered June 24, 1963, being hereto attached. Herein fail not, due return make of this writ as the law directs.

Witness this 5 day of July, 1963.

Mary Nell Thornton
Register

Filed in office this 5
day of July, 1963.
Mary Nell Thornton Register.

EXECUTED by serving a copy of the Equity Summons, amendment adding parties defendant, petition for peremptory or temporary injunction, decree for temporary injunction, order for issuance of writ of injunction, writ of injunction, amendment to petition, amendment to temporary injunction, and amendment to temporary injunction nunc pro tunc, attached thereto, on ______, Defendant, this ____ day of ______, 1963.

______
SHERIFF

______
D. S.

STATE OF ALABAMA, Ex Rel,
RICHMOND M. FLOWERS, as
ATTORNEY GENERAL OF
ALABAMA,

PETITIONER

VS.

MARVIN ROBINSON; CONGRESS
OF RACIAL EQUALITY; BERNARD
LEE; SOUTHERN CHRISTIAN
LEADERSHIP CONFERENCE;
GADSDEN CHRISTIAN CITIZENS
COMMITTEE; GADSDEN STUDENT
MOVEMENT; STUDENT NON-
VIOLENT COORDINATING
COMMITTEE; JOHN DOE and
RICHARD ROE,

RESPONDENTS

IN THE CIRCUIT COURT OF

ETOWAH COUNTY,

ALABAMA

IN EQUITY

CASE NO. 16,743

AMENDMENT

Comes now the State of Alabama by and through its Attorney General, Richmond M. Flowers, and after first having obtained leave of the Court, amends the original petition filed in this cause on June 17, 1963, by adding thereto the following respondents:

Joe Louis Aaron
Mattie Ayers
Annie Pearl Avery
Ola D. Ayers
William W. Allen
Melvin Baker
Lindy Fay Bustion
Josephy Earl Benford
Raymond S. Blanks
Leon Ballou
Vivian Ann Bush
John C. Billups
Eddie Billingsley
Linda Fay Bustion
Frank James Cash
Henry Charles Carlisle
Willie Earl Colvin
Robert Earl Clifton
James Cochran
Sherry Lee Carlisle
James Owen Crook

Peggy Jean Crook
Jessie Calvin Cole
Bernard Corbin
Jereldene Carlisle
William Allen Coats
Bernard Allen Corbin
Curlie B. DeRamus
Jimmie Lee Douthard
Eddie Jr. Dobbins
Sandra Dixon
William Jonathan Douthard (Meatball)
Herbert Douthard
James Edward Dobbins
Abraham Edison
Billy Edwards
Rinkie Edwards
Floralean Edwards
Maddie Edwards
James Otis Franklin, Jr.
Clyde William Fleming
Joseph Griffith Fielder
Andrew Lewis Fisher

Early Franklin
Curtis Fielder, Jr.
Earnest Lewis Franklin
Judy Fisher
Mary Ann Flakes
Virhonia Foster, alias
Virginia Foster
Ernest Calvin Flintall
Walter Green
McBride Green, Jr.
Louis Thomas Green
Wilson Gune
Wallace Gadson
Willie James Grayer, Jr.
Charles Gibbs
Harvey Lewis Gadson
Margaret Ann Green
Annie Guyton
Mattie Gray
Wilson Burnett Gunn
Dorothy Jene Graham
Ollie Gray
Jo Ann Guinn
Bernice Griffin
Oliva Holt
Steve Harris
Betty Ann Holley
Robert Lewis Hunter
Henry James Hoyt
Eugene Louis Harrell
Aaron Hugley
Grady Lee Hale
Tommie Lee Holt
Wavelyn Holmes
Robert Lee Henry
Mary Lucille Hamilton
Bennie Hale
Juanita Higgins
Emma Hollinquest
Charity Harrison
Nora Lee Holt
Carolyn Hollingquest
John Edward Isom
David Sudona Jackson
Robert Earl Jones
Bobby Johnson
Gregory Johnson
Dave C. Jackson
James Lewis Jackson
Gerald Johnson
Evelyn Johnson
Barbara Jackson
Doris Knowles
Robert L. Kimbrough
Barbara Ann Kyle
Benjamin Kelly
Leonard Kirkpatrick
Dorothy Kidd
Robert Lee Lindsey
Theo Lyles
Harold Edward Lipscomb
Phillip Lipscomb
Bennie Luchin
Joyce Lowe
Landy McNair
Oscar Lee Miles, alias
Oscar Lee Myles
Rosie Mae Murphy
Betty Joyce Moore, alias Moone
Jerome Mathews
Rufus Macon
Marion Jr. III Mostella
Alfred Lee Merkerson
Mattie McKinney
Lonnie G. Malone
Robert Lee McCloud
Albert Truly Manning
Opal Moon
Lavonna Clifton Moone
Edward Jerome Moon
Bobby Lee McQueen
Shirley Marbury
Rita Morgan
Eva Mae Mason
Ella McElderry
Limmie George Marlow, alias
Limmie Malone
Katie Mae Marsh
Bennie Lee Nicholson
John Lee Jr. Owens
James Lewis Patterson
Leon Patterson
Vera Virginia Parks
Catherine Patterson
Jackie Patillo
Betty Pierce
Martha Powell
Willie Owen Rawls
Rosevelt Robinson
Johnny David Rutledge
Donald Ransaw
Eric Rainey
Florine Russell
Evena Hazel Ragland
Edward Rudolph
King David Smith
Rosie Lee Smith Sittie
James Foster Smith
Richard Charles Suttles
Booker T. Strong, Jr.
Charles Stephens
Gerald Street
Rose Ann Strong
Linda Smith
Kathern Smith
Mattie Strong
Jacqueline Smith
Robert Lee Smith
Utiss Columbus Smith
Patricia Ann Suttle
Ethel Mae Sims
Stella Strong
La Jean Twymon
Melvin Lee Turner
William Turner
Elbert Jr. Thomas
Cornelia Turner
Robert Frank Thomas
Leroy Turner
Reaice Pearl Turner

Evie Louise Thomas
Willie Claude Terry
Florence Thomas
Betty Terry
Mary Louise Underwood
Earnest Lee Underwood
Florine Vinson
Bonnie Sue Veasy
Eddie Mae Wilson, alias
    Willie Mae Wilson
A. Z. Wilson
James Worthy
Alvery Lee Williams
Tommie Lee Watson
Obed Warren
Horace Warren
Billy Joe Warren
Virginia McElrath
Mattie Dixon
Mary L. Ford
Johnnie B. Faulkner
E. M. Harrold
Mary Ransaw
Richard Robinson
Eddie Harris
William Thomas
James Berman
Ardreia Guinn
Dorothy Lewis
Jennette Green
Dorothy Wyatt
Dorothy Wyatt
Jerry Woods
Charles Edward Watters
Elliott Vann Wills
Jessie J. Wilson
Jessie James Waller
Aaron Jr. Williams
Bobby Lee Williams
Otto Wansley
Stanley Evan Wills
Billy Charles Wills
Ozellar Warren
Shirley Wyatt
Maggie Woods
Nathaniel Woody
Willie Mae Wilson
Clarence Jr. Young
Jaunita Young
Barbara Moton
Carolyn Ragland
Carol Moton
Patricia Parker
E. M. Simmons
Estella Crayton
Bernard Lee
Phyllis Madden
Ether McKinney
Eula Stewart
L. E. Turner
Tom Sturdibant
Paul Corbin
Hardy Payne
Joyce Miller
Annie Lee Dell
Willie Mae Edwards
Marvin Edison Robinson
James Lee Smith

/s/ RICHMOND M. FLOWERS
RICHMOND M. FLOWERS
Attorney General State of Ala.

/s/ JOHN G. BOOKOUT
JOHN G. BOOKOUT
Assistant Attorney General
State of Alabama

Filed in office this 2nd
day of July, 1963.

/s/ MARY NELL THORNTON, Register

STATE OF ALABAMA, EX REL,
RICHMOND M. FLOWERS, as
Attorney General of Alabama,

Petitioner,

VS

~~MARVIN ROBINSON;~~ CONGRESS OF RACIAL
EQUALITY; ~~BERNARD LEE;~~ SOUTHERN
CHRISTIAN LEADERSHIP CONFERENCE;
GADSDEN CHRISTIAN CITIZENS COMMITTEE;
GADSDEN STUDENT MOVEMENT; STUDENT
NON-VIOLENT COORDINATING COMMITTEE;
JOHN DOE AND RICHARD ROE,

Respondents.

IN THE CIRCUIT COURT
OF
ETOWAH COUNTY,
ALABAMA
NO. 16,743

PETITION FOR PEREMPTORY OR TEMPORARY INJUNCTION

Comes now the State of Alabama, acting by and through and on relation of its Attorney General Richmond M. Flowers, and would show unto this Honorable Court as follows:

1. That your Petitioner brings this proceeding in the name of the State of Alabama, as the Attorney General of the State of Alabama; that your Petitioner is the duly elected and qualified Attorney General of the State of Alabama.

2. Your Petitioner avers that the name and address of the Respondents are as follows: Marvin Robinson, New Orleans, Louisiana; Congress of Racial Equality, 38 Park Row, New York 38, New York; Bernard Lee, Atlanta, Georgia; Southern Christian Leadership Conference, 6 Raymond Street, N. W., Atlanta 14, Georgia; Gadsden Student Movement, Gadsden, Alabama and Gadsden Christian Citizens Committee, Gadsden, Alabama, no further address known. Your Petitioner further avers that Respondents Marvin Robinson and Bernard Lee are over the age of twenty-one years. Petitioner further avers that all of said Respondents who are under the age of twenty-one years are over the age of fourteen years.

3. The Respondent Congress of Racial Equality, Inc. is a New York Corporation with its home office at 38 Park Row, New York 38, New York.

4. The Respondent Southern Christian Leadership Conference is an unincorporated association and its principal address is 6 Raymond Street, N.W., Atlanta 14, Georgia.

5. The Respondent Student Non-Violent Coordinating Committee is an unincorporated association and its principal address is 6 Raymond Street, N.W., Atlanta 14, Georgia.

6. Petitioner avers that on, to-wit: June 10 to 15, inclusive, and other recent dates, the Respondents acting in concert and by pre-arranged agreement and understanding have interfered with and are interfering with the normal flow of vehicular and pedestrian traffic in, through and to the City of Gadsden, Alabama by assembling large numbers of Negroes on the streets and sidewalks of said city, blocking traffic and blocking entrance to various stores and business establishments in said city, by holding hands in such fashion and number as to

form a human chain, and by lying down on the sidewalks and streets in front of and in the aisles of business establishments and bodily blocking entrance thereto thereby causing hazards detrimental to the people of the State.

7. Petitioner avers that on, to-wit: June 10 to 15, inclusive, and other recent dates, the Respondents acting in concert and by pre-arranged agreement and understanding have interfered with and are interfering with the normal flow of inter and intra city and state commerce in, through and to the City of Gadsden, Alabama, by assembling large numbers of Negroes on the streets and sidewalks of said city, blocking traffic and blocking entrance to various stores and business establishments in said city, by holding hands in such fashion and number as to form a human chain, and by lying down on the sidewalks and streets in front of and in the aisles of business establishments and bodily blocking entrance thereto thereby causing hazards and economic conditions detrimental to the people of the State. Petitioner further avers that the said acts of Respondents are reasonably calculated to provoke a breach of the peace unless restrained by this Honorable Court. Additional burden is being placed by said acts upon the law enforcement agencies of said City of Gadsden, County of Etowah, and the State of Alabama in an effort to free the streets and sidewalks from the unlawful obstruction of said commerce and business establishments and in protecting the health and welfare of the people of the City of Gadsden, Alabama and elsewhere. Petitioner avers further that Respondents and those working or assembling with and by and through them are not normal pedestrians, but are outsiders and insiders who seek to vindicate so-called constitutional rights and to obtain additional rights by such demonstrations, and blocking of streets and sidewalks and entrances to business establishments; that there is now pending in the Federal Court, Birmingham, Alabama, a suit filed by Negroes of Gadsden, Alabama as a class action in which they seek by legal means to obtain the same redress and rights which they now seek by their unlawful actions as aforesaid. All of said action of Respondents, Petitioner avers to be against the peace and dignity of the State of Alabama and the general welfare of her people.

7. Petitioner further avers that the actions and conduct of the party Respondents herein complained of has caused, and unless enjoined, will continue to cause irreparable injury, harm and detriment to Petitioner, the municipal corporation of Gadsden, Alabama, of Etowah County and the general welfare of the people of the State of Alabama.

8. Petitioner avers that its remedy at law is inadequate; that the continued and repeated acts of Respondents as herein averred will cause incidents of violence, that Petitioner has no other adequate remedy to prevent irreparable injury to persons and property in the City of Gadsden, of Etowah County, and of the State of Alabama, and verily believes that such will occur if Respondents continue to so conduct themselves which they will do if not restrained by this Court.

9. Petitioner would show that an emergency exists and that it is wholly impractical to give notice prior to the issuance of a preliminary injunction herein and that the circumstances are such as to permit of no delay in the issuance of a temporary injunction.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays as follows:

1. That process of this Court issue to Marvin Robinson, Congress of Racial Equality, Bernard Lee, Southern Christian Leadership Conference, Gadsden Christian Citizens Committee, Gadsden Student Movement, Student Non-Violent Coordinating Committee,

making each of said persons or associations a party respondent to this bill, as provided by law and the rules of this Court; and that proper process be issued out of this Court requiring them and each of them to plead, answer or demur hereto within the time required by law.

2. That preliminary writs of injunction be issued to: Marvin Robinson, Congress of Racial Equality, Bernard Lee, Southern Christian Leadership Conference, Gadsden Christian Citizens Committee, Gadsden Student Movement, Student Non-Violent Coordinating Committee, enjoining each and all of said persons, together with all other persons acting in concert with said persons in and about the activities of said persons hereinabove complained of, from

(a) interfering with the normal flow of inter and intra city and state commerce by blocking traffic and entrances to and aisles of various stores and business establishments in the City of Gadsden;

(b) interfering with the normal flow of inter and intra city and state commerce by holding hands in such fashion and number as to form a human chain;

(c) interfering with the normal flow of inter and intra city and state commerce by lying down on the sidewalks and streets in front of and in the aisles of said stores and business establishments;

(d) interfering with the normal flow of vehibular and pedestrian traffic by holding hands in such a fashion and number as to form a human chain;

(e) interfering with the normal flow of vehicular and pedestrian traffic by lying down on the sidewalks and streets in front of and in the aisles of said stores and business establishments.

(f) interfering with the normal flow of inter and intra city and state commerce, in any wise, in and through the City of Gadsden, Alabama, pending the determination of the rights asserted on behalf of a class comprised of Negro citizens of Gadsden in that certain civil action now pending under Docket No. 1271 in the United States District Court for the Northern District of Alabama, Middle District, and styled Joseph Faulkner, et al. vs. The City of Gadsden, Alabama, et al.

3. That, upon a final hearing herein, the Court will make said preliminary injunctions permanent and perpetual.

Petitioner submits itself to the jurisdiction of this Honorable Court. If petitioner be mistaken in the special relief hereinabove prayed, then he now asks for such other, further, different, general and special relief as in equity and good conscience he may be entitled to.

/s/ RICHMOND M. FLOWERS
Richmond M. Flowers, as
Attorney General of Alabama
Solicitor for Petitioner

Filed in office this 17
day of June, 1963.
/s/ MARY NELL THORNTON, Register

STATE OF ALABAMA)
ETOWAH COUNTY)

Before the undersigned authority in and for said County in said State this day personally appeared Dewey Colvard who, being first duly sworn, did depose and say:

My name is Dewey Colvard. I am more than twenty-one years of age. I am the duly delected Sheriff of Etowah County, Alabama. I have read the averments of the above and foregoing petition; have knowledge of the things therein averred as facts; and swear that the same are true and correct as therein stated.

/s/ DEWEY COLVARD

Sworn to and subscribed before me this 17 day of June, 1963.

/s/ ERNESTINE HALL

(NOTARIAL SEAL)

Filed in office this 17 day of

June, 1963.

/s/ MARY NELL THORNTON, Register

STATE OF ALABAMA, EX Rel ,
RICHMOND M. FLOWERS, as
Attorney General of Alabama

Petitioner,

VS.

MARVIN ROBINSON; CONGRESS OF
RACIAL EQUALITY; BERNARD LEE;
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE; GADSDEN CHRISTIAN
CITIZENS COMMITTEE; GADSDEN
STUDENT MOVEMENT; STUDENT
NON-VIOLENT COORDINATING
COMMITTEE; JOHN DOE AND
RICHARD ROE,

Respondents.

IN THE CIRCUIT COURT

OF

ETOWAH COUNTY, ALABAMA

NO. 16,743

TEMPORARY INJUNCTION

A verified petition in the above-styled cause having been presented to me on this the 17 day of June, 1963, at 4:00 o'clock P m., in the City of Gadsden, Alabama.

Upon consideration of said petition, and the public welfare, peace and safety requiring it, it is hereby CONSIDERED, ORDERED, ADJUDGED AND DECREED that a peremptory or temporary writ of injunction be, and the same is, hereby issued in accordance with the prayer of said petition.

It is further ORDERED, ADJUDGED AND DECREED that the respondents and others identified in said petition, their officers, servants, agents and employees, and all persons having notice of this order, are hereby enjoined and restrained from: committing breaches of the peace;

From blocking, by great numbers or by holding hands, the entrances and aisleways to business establishments in the city of Gadsden, Alabama and Etowah County, Alabama.

And from in the same manner blocking the public streets or sidewalks of the city of Gadsden, Alabama and

Etowah County, Alabama, or from blocking said places by lying down, or any other method of blocking said places.

interfering with the normal flow of inter and intra city and state commerce by blocking traffic and entrances to and aisles of various stores and business establishments in the City of Gadsden;

interfering with the normal flow of inter and intra city and state commerce by holding hands in such fashion and number as to form a human chain;

interfering with the normal flow of inter and intra city and state commerce by lying down on the sidewalks and streets in front of and in the aisles of said stores and business establishments;

interfering with the normal flow of inter and intra city and state commerce, in any wise, in and through the City of Gadsden, Alabama, pending the determination of the rights asserted on behalf of a class comprised of Negro citizens of Gadsden in that certain civil action now pending under Docket No. 1271 in the United States District Court for the Northern District of Alabama, Middle District, and styled Joseph Faulkner, et al. vs. the City of Gadsden, Alabama, et al.,

But nothing in this order shall be interpreted to restrict or enjoin said parties or their associates from peacefully walking in single or double file the streets of said city and county, (in an orderly fashion.)

Done this the 17 Day of June, 1963.

/s/ A. B. CUNNINGHAM

A B Cunningham
CIRCUIT JUDGE

Filed in office this 17 day of
June, 1963.
/s/ MARY NELL THORNTON, Register

STATE OF ALABAMA, EX REL,
RICHMOND M. FLOWERS as

Attorney General of Alabama,

Petitioner,

vs

MARVIN ROBINSON; CONGRESS OF
RACIAL EQUALITY; BERNARD LEE;
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE; GADSDEN CHRISTIAN
CITIZENS COMMITTEE; GADSDEN
STUDENT MOVEMENT; STUDENT
NON-VIOLENT COORDINATING
COMMITTEE; JOHN DOE AND
RICHARD ROE:

Respondents.

IN THE CIRCUIT COURT OF
ETOWAH COUNTY, ALABAMA
IN EQUITY

CASE NO. 16,743

It is ordered by the Court that the Register of this Court, in conformity with the decree entered this day, of temporary injunction, issue the necessary order or process into the hands of the Sheriff of this County for the purpose of serving upon the Respondents

Done this the 17th day of June, 1963.

/s/ A. B. CUNNINGHAM
A B Cunningham
CIRCUIT JUDGE

Filed in office this 17
day of June, 1963.
/s/ MARY NELL THORNTON, Register

WRIT OF INJUNCTION

STATE OF ALABAMA)
ETOWAH COUNTY)

TO: MARVIN ROBINSON, CONGRESS OF RACIAL EQUALITY, BERNARD LEE, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, GADSDEN CHRISTIAN CITIZENS COMMITTEE, GADSDEN STUDENT MOVEMENT, STUDENT NON-VIOLENT COORDINATING COMMITTEE, JOHN DOE AND RICHARD ROE, GREETING:

Whereas, the State of Alabama, acting by,/through and on the relation of its Attorney General, namely, Richmond M. Flowers, has this day exhibited its petition for peremptory or temporary injunction in the Circuit Court of Etowah County, Alabama, and has obtained from the Honorable A. B. CUNNINGHAM
an order for the issuance of a writ of injunction to restrain and enjoin you as hereafter mentioned,

NOW THEREFORE, you, the said above named Defendants, together with all persons acting in concert with you in and about the acts and conduct hereinafter mentioned, are stricly commanded and enjoined and restrained from: committing breaches of the peace;

blocking, by great numbers or by holding hands, the entrances and aisleways to business establishments in the city of Gadsden, Alabama and Etowah County, Alabama.

And from in the same manner blocking the public streets or sidewalks of thecity of Gadsden, Alabama and Etowah County, Alabama, or from blocking said places by lying down, or any other method of blocking said places;

interfering with the normal flow of inter and intracity and state commerce by blocking traffic and entrances to and aisles of various stores and business establishments in the city of Gadsden;

interfering with the normal flow of inter and intra city and state commerce by holding hands in such fashion and and numbers as to form a human chain;

interfering with the normal flow of inter and intra city and state commerce by lying down on the sidewalks and streets in front of and in the aisles of said stores and business establishments;

interfering with the normal flow of inter and intra city and state commerce, in any wise, in and through the City of Gadsden, Alabama, pending the determination of the rights asserted on behalf of a class comprised of Negro citizens of Gadsden in that certain civil action now pending under Docket No. 1271 in the United States District Court for the Northern District of Alabama, Middle District, and styled Joseph Faulkner, et al, vs. the City of Gadsden, Alabama, et al.

But nothing in this order shall be interpreted to restrict or enjoin said parties or their associates from pecfully walking in single or double file the streets of said city and county, (in an orderly fashion) , all until the further order of this Court.

WITNESS MY HAND, this the 17 day of June, 1963.

/s/ MARY NELL THORNTON
REGISTER

TO THE SHERIFF OF ETOWAH COUNTY, ALABAMA:

You are hereby commanded to execute this writ, and to return the same with your endorsement thereon, to this Court with all convenient speed.

WITNESS MY HAND, this 17 day of June, 1963

/s/ MARY NELL THORNTON
REGISTER

Filed in office this 17
day of June, 1963
/s/ MARY NELL THORNTON, Register.

STATE OF ALABAMA, Ex Rel,
RICHMOND M. FLOWERS, as
Attorney General of Alabama,

PETITIONER

VS.

MARVIN ROBINSON: CONGRESS OF
RACIAL EQUALITY: BERNARD LEE:
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE: GADSDEN STUDENT
MOVEMENT: GADSDEN CHRISTIAN CITIZENS
COMMITTEE: STUDENT NON-VIOLENT
COORDINATING COMMITTEE: JOHN DOE
AND RICHARD ROE,

RESPONDENTS

IN THE CIRCUIT COURT OF
ETOWAH COUNTY,
ALABAMA

IN EQUITY

NO. 16,743

AMENDMENT

Comes now the State of Alabama, acting by and through and on relation of its Attorney General, Richmond M. Flowers, and amends the original petition filed in this cause on June 17, 1963, by adding thereto the following additional paragraphs and prayers.

10. That on, to-wit, June 17, 1963, the respondents, or those acting in concert with said respondents, entered a business establishment, to-wit, White Palace Cafe, Broad Street, Gadsden, Etowah County, Alabama, and seated themselves in said place of business and refused to leave after being requested to leave or vacate said establishment by the owner or proprietor, his agent, servant or employee, while acting within the line and scope of his employment, who was in possession of said business, and unlawfully interfered with the said persons's use of his business.

It is further averred that because of the persistent pattern of the respondents or those acting in concert with said respondents during the past several days in Etowah County, Alabama, and because of the patters established throughout the nation by similar demonstrators during recent weeks, it is reasonable to expect similar acts will be committed at other business establishments or places of private property or use.

11. That by said conduct set out in paragraph 10 above, said respondents and those acting in concert with them are interfering with the normal flow of inter and intra city and state commerce.

WHEREFORE, PREMISES CONSIDERED, the petitioner prays for the following additional relief:

G. That said temporary injunction now pending be amended as follows:

(g.) That said respondents and those acting in concert with them be enjoined and restrained from sitting or remaining in any business establishment or any other private place or establishment after being requested to leave or vacate said establishment by the owner or proprietor, his agent, servant, or employee, while acting within the line and scope of his employment, who is in possession of the business or property, where it interferes with the right to engage in inter and intra city and state commerce.

4. That upon a final hearing herein, the Court will make said preliminary injunction permanent and perpetual.

/s/ RICHMOND M. FLOWERS
RICHMOND M. FLOWERS, as Attorney
General of Alabama
SOLICITOR FOR PETITIONER

Filed in office this
18 day of June, 1963

/s/ MARY NELL THORNTON, Register.

STATE OF ALABAMA)
:
COUNTY OF ETOWAH)

Before me the undersigned authority in and for said County in said State this day personally appeared Deway Colvard, who, being first duly sworn, did depose and say:

My name is Dewey Colvard. I am more than twenty-one years of age. I am the duly elected Sheriff of Etowah County, Alabama.

I have read the averments of the above and foregoing amendment; have knowledge of the things therein averred as facts; and swear that the same are true and correct as therein stated.

/s/ DEWEY COLVARD

Sworn to and subscribed before me this the 18 day of June, 1963.

/s/ MAURINE NORTON
N.P.

Filed in office this 18 day of June, 1963.

/s/ MARY NELL THORNTON, Register.

STATE OF ALABAMA, Ex Rel,
RICHMOND M. FLOWERS, as
Attorney General of Alabama,

Petitioner

vs.

~~MARVIN ROBINSON;~~ CONGRESS
OF RACIAL EQUALITY; BERNARD
LEE; SOUTHERN CHRISTIAN
LEADERSHIP CONFERENCE;
GADSDEN STUDENT MOVEMENT;
GADSDEN CHRISTIAN CITIZENS
COMMITTEE; STUDENT NON-
VIOLENT COORDINATING
COMMITTEE; JOHN DOE AND
RICHARD ROE,

Respondents

IN THE CIRCUIT COURT OF

ETOWAH COUNTY,

ALABAMA

NO. 16,743

AMENDMENT TO TEMPORARY INJUNCTION

A verified amendment to the petition heretofore presented to this Court in this cause having been presented to me on this the 18th day of June, 1963, at 2:00 o'clock P.M. in the City of Gadsden, Etowah County, Alabama,

And upon due consideration of said amendment and further consideration of the original petition, it is hereby CONSIDERED, ORDERED, ADJUDGED AND DECREED that the preemptory or temporary writ of injunction heretofore issued be, and the same is hereby amended as hereinafter set out,

And it is further ORDERED, ADJUDGED AND DECREED that the Respondents and others identified in this cause, their officers, servants, agents and employees and all persons having notice of this order acting in concert with said Respondents, are in addition to the acts set out in this Court's order of June 17th, 1963, further restrained and enjoined from:

sitting or remaining on the premises of any business establishment or private place after being requested to leave or vacate said premises by the owner, or person, his agent, servant or employee in possession of said establishment or private place,

and from sitting or remaining on the premises of any business establishment or private place after being requested to leave or vacate said premises by the owner or person, his agent, servant or employee in possession of said establishment or private place which interferes with the normal flow of inter and intra city and state commerce.

Done this the 18 day of June, 1963.

/s/ A. B. CUNNINGHAM
CIRCUIT JUDGE IN EQUITY SITTING

Filed in Office this
18 day of June, 1963.
/s/ MARY NELL THORNTON,
Register

STATE OF ALABAMA, Ex Rel, RICHMOND M. FLOWERS, as Attorney General of Alabama,

Petitioner

VS.

MARVIN ROBINSON; CONGRESS OF RACIAL EQUALITY; BERNARD LEE; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; GADSDEN CHRISTIAN CITIZENS COMMITTEE; GADSDEN STUDENT MOVEMENT; STUDENT NON-VIOLENT COORDINATING COMMITTEE; JOHN DOE and RICHARD ROE,

Respondents

IN THE CIRCUIT COURT
OF
ETOWAH COUNTY,
ALABAMA
IN EQUITY
CASE NO. 16,743

The temporary order of injunction as heretofore entered by this Court on the 17th day of June, 1963, and as amended by this Court on the 18th day of June, 1963, ex mero motu is amended nunc pro tunc to conform to the oral instruction, command, and order given by the Court to the Sheriff of Etowah County, Alabama at the time the original temporary order of injunction was issued and at the time same was amended, to the effect that the Court instructs the said Sheriff to enforce obedience to the injunction and to forthwith take into his custody any violators of said injunction and to direct the Attorney General of Alabama or the Solicitor of the Sixteenth Judicial Circuit of Alabama to file as soon as possible a citation for contempt and an order to the defendant to show cause why he should not be held in contempt for alleged violation, which oral instruction was given by the Court to the Sheriff upon the issuance of said temporary order of injunction and its amendment.

Done this the 24 day of June, 1963.

/s/ A. B. CUNNINGHAM
CIRCUIT JUDGE, In Equity

Filed this 24 day of June, 1963.

/s/ A. B. CUNNINGHAM, Judge in Equity

7TH DIV. NO. ______

IN THE SUPREME COURT OF ALABAMA

EX PARTE STATE OF ALABAMA
EX REL. ATTORNEY GENERAL
IN RE: MARVIN ROBINSON, ET AL.,
APPELLANTS
VS.
STATE OF ALABAMA,
APPELLEE

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF ALABAMA:

Comes now the State of Alabama, petitioner in the above-styled cause, by and through its Attorney General, Richmond M. Flowers, and respectfully petitions this Honorable Court for a Writ of Certiorari directed to the Court of Appeals of the State of Alabama, to send a full and complete record of the proceedings in this cause, and to review, revise, and reverse and hold for naught that certain Judgment and Opinion rendered by the Court of Appeals of Alabama on October 6, 1964, wherein Marvin Robinson, et al., were appellants in appeals from the Circuit Court of Etowah County, Alabama.

Your petitioner avers that an application for rehearing and brief in support thereof were duly filed by your petitioner in the Court of Appeals, and that said application for rehearing was overruled and denied on October 27, 1964.

Your petititioner further shows unto this Honorable Court that the Court of Appeals erred in said cause in holding that your petitioner's motion to dismiss the appeal was not well taken and that the trial court erred in denying the petition for habeas corpus.

It is respectfully submitted that a careful reading of the transcript of the record of the proceedings in the Circuit Court of Etowah County, Alabama, introduced in the proceedings before the Court of Appeals will reveal that the appeal was moot and should have been dismissed.

WHEREFORE, THE PREMISES CONSIDERED, your petitioner prays that a Writ of Certiorari, or such other appropriate and necessary Writ, be issued out of and under seal of this Honorable Court directed to the Court of Appeals, commanding and requiring said Court to certify and send to this Honorable Court on a day certain to be designated therein, a full and complete transcript of the records and all proceedings of the Court of Appeals in said case, styled as aforesaid, to the end that said case may be reviewed and determined by the Supreme Court of Alabama, in consonance with law and that this Honorable Court thereupon proceed to review and correct the error complained of, and to reverse the said opinion of the said Court of Appeals, and to render such Judgment as said Court should have rendered and suggesting to said Court to stay or recall its certificates of Judgment, pending the determination of this petition and decision of this Honorable Court on said petition.

Submitted herewith is brief and argument in support of this petition.

Respectfully submitted,

Richmond M. Flowers
RICHMOND M. FLOWERS
ATTORNEY GENERAL

W. Mark Anderson III
W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR PETITIONER

I hereby certify that I have mailed, properly stamped and addressed, copies of the foregoing Petition for Writ of Certiorari to the Court of Appeals to Honorable Oscar W. Adams, Jr., 1630 North Fourth Avenue, Birmingham, Alabama, and Honorable Charles S. Conley, 530 South Union Street, Montgomery, Alabama, Attorneys for Respondents, on this the 12th day of November, 1964.

W. Mark Anderson III
W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

7TH DIV.

NO. ______

IN THE SUPREME COURT OF ALABAMA

EX PARTE STATE OF ALABAMA

EX REL: ATTORNEY GENERAL

IN RE: MARVIN ROBINSON, ET AL.,

APPELLANTS

VS.

STATE OF ALABAMA,

APPELLEE

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OF

RICHMOND M. FLOWERS
ATTORNEY GENERAL

AND

W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR PETITIONER

STATEMENT OF THE CASE

On October 6, 1964, the Court of Appeals overruled the State's motion to dismiss this appeal as moot and reversed and remanded the judgments of the Circuit Court of Etowah County, Alabama, denying the habeas corpus petition on the following ground:

That the trial court erred in denying the petition for the writ of habeas corpus.

The State's application for a rehearing was duly filed on October 21, 1964, and overruled on October 27, 1964.

ARGUMENT

The appellants in this case were arrested on citations for contempt for breach of an injunction against various obstructive acts during the racial disturbances in Gadsden, Alabama, in the summer of 1963. They petitioned for a writ of habeas corpus to examine the cause of their detention. At the habeas corpus hearing, the writ was denied but the appellants were admitted to bail.

> "It is further ordered and adjudged by the Court that Appearance Bonds for Petitioners herein be and the same are hereby set in the Equity Injunction Case, as follows: Bond for the eight (8) leaders fixed at Five Hundred ($500.00) Dollars, Bond for those 16 to 18 years of age fixed at Two Hundred ($200.00) Dollars, and Bond for all others fixed at Three Hundred ($300.00) Dollars." (T. p. IV.)

In its original opinion the Court of Appeals said:

> "However, the status of the petitioner on the date of the judgment appealed from is determative as to whether there exists the physical restraint our cases refer to. . . ."

The records is clear that "on the date of the judgment appealed from", bail was available to the appellants. The essential question in determining whether the appeal was subject to dismissal as moot, is, therefore, when bail is available to a habeas corpus petitioner on the day habeas corpus is denied him, is "the physical restraint our cases refer to" still present? If not, then he is not entitled to relief by habeas corpus and an appeal from a denial thereof raises only moot questions and is subject to dismissal for that reason.

In Free v. State, 34 Ala. App. 127, 37 So. 2d 149, habeas corpus was denied the petitioner on July 27, 1948, and bail was set. He appealed. The record of appeal was filed in the Court of Appeals on August 19, 1948. On September 14, 1948, 49 days after the denial, the following certificate was received in the Court of Appeals.

> ")
> "'State of Alabama)
> "'County of Elmore)   "'Circuit Court
>)
>
> "'I, C. W. Martin, Clerk of the Circuit Court of Elmore County, Alabama, do hereby certify that Jim Free has made bond in the sum of Three Hundred ($300.00) Dollars in the case of the State of Alabama vs. Jim Free, on charge of aiding a prisoner

> to escape, and being in the amount and conditioned as provided by an order of the Judge of said Circuit Court rendered on the 27th day of July, 1948, on the hearing of the petition for a writ of Habeas Corpus filed by said defendant, and that said Jim Free is now released from custody on said charge by virtue of his making said bond.
>
> '"Given under my hand and official seal this 13th day of September, 1948.
>
> 'C. W. Martin
> 'Clerk, Circuit Court,
> Elmore County, 'Alabama.'"

In this case, habeas corpus was denied on June 26, 1963, and bail was set. Again there was an appeal. The record of appeal was filed in the Court of Appeals on July 25, 1963. On September 26, 1963, 91 days after the denial, the following certificate was received in the Court of Appeals.

> "STATE OF ALABAMA)
> :
> "COUNTY OF ETOWAH)
>
> "I, Dewey F. Colvard, Sheriff of Etowah County, Alabama, do hereby certify that all of the appellants have made bond in the case of The State of Alabama, Ex Rel, etc., Plaintiff, against Marvin Robinson, Et Als, Defendants, on the charge of violating a temporary injunction issued by the Circuit Court of the Sixteenth Judicial Circuit of Alabama, and being in the amount and condition as provided by an order of the Judge of said Circuit Court, and that all of the said appellants are now released from custody on said charge by virtue of their making said bond.
>
> /s/"Dewey Colvard
> "DEWEY F. COLVARD, SHERIFF
> "ETOWAH COUNTY, ALABAMA
>
> "Sworn to and subscribed before me on this the 18 day of September, 1963.
>
> /s/"Ernestine Hall
> "NOTARY PUBLIC"

The cases are remarkably similar, yet in Free, the appeal was dismissed as moot while in this case, the motion to dismiss was denied and the judgment reversed and remanded. How can these to decisions be reconciled? Certainly there is no practical distinction between the two in the mere fact that one is certified by the Clerk and one by the Sheriff. Both are "outside the record". The status of the appellants as to "the physical restraint our cases refer to" at the time of the denial of habeas corpus and at the time of the appellate decision is identical in both cases. Certainly, if the appeal was due to be dismissed in Free, it was likewise due to be dismissed in this case.

However, Free is not the only case in point upon which the State can and does rely. The case of Howard v. City of Bessemer, 269 Ala. 474, 114 So. 2d 164, is also quite similar to the present one. There, Howard sought habeas corpus. It was denied. The Court of Appeals affirmed. Howard petitioned the Supreme Court for certiorari. The City moved to dismiss the petition as moot in that Howard was no longer in custody. Once again the showing of mootness was "outside the record". Yet the motion was granted and the petition dismissed.

Obviously, the fact of mootness was adequately presented to the Court of Appeals by the certificate of the Sheriff and by the motion to dismiss of the State. The physical restraint here was identical to that the Court of Appeals held insufficient in Free. Consequently, the motion to dismiss should have been granted and the appeal dismissed.

Under the law and facts of this case, the State contends that this Honorable Court has no choice but to reverse the judgment of the Court of Appeals heretofore entered, and to enter an order directing the Court of Appeals to dismiss the appeal from the judgment of the Circuit Court of Etowah County, Alabama.

Respectfully submitted,

Richmond M. Flowers
RICHMOND M. FLOWERS
ATTORNEY GENERAL

W. Mark Anderson III
W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR PETITIONER

I hereby certify that I have mailed, properly stamped and addressed, copies of the foregoing Brief and Argument in Support of Petition for Writ of Certiorari to the Court of Appeals to Honorable Oscar W. Adams, Jr., 1630 North Fourth Avenue, Birmingham, Alabama, and Honorable Charles S. Conley, 530 South Union Street, Montgomery, Alabama, Attorneys for Respondents, on this the 12th day of November, 1964.

W. Mark Anderson III
W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

7TH DIV. NO. 747

IN THE COURT OF APPEALS OF ALABAMA

Mr. Conley

OCT 22 1964
Rec'd

MARVIN ROBINSON, ET. AL.,
APPELLANTS

VS.

STATE OF ALABAMA,
APPELLEE

APPEALED FROM THE CIRCUIT COURT OF
ETOWAH COUNTY, ALABAMA

APPLICATION FOR REHEARING

Comes now the State of Alabama, appellee in the above-styled cause, by and through its Attorney General, Richmond M. Flowers, and respectfully requests this Honorable Court to grant unto the appellee a rehearing in said cause, to set aside, annul and hold for naught the judgment heretofore rendered on October 6, 1964, reversing said cause to the Circuit Court of Etowah County, Alabama, and, upon a reconsideration of said cause, to affirm the judgments and sentences of the trial court, or to dismiss the appeal as moot.

Submitted herewith is brief and argument in support of this application for rehearing.

Respectfully submitted,

Richmond M. Flowers
RICHMOND M. FLOWERS
ATTORNEY GENERAL

W. Mark Anderson III
W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR APPELLEE

I hereby certify that I have mailed, properly stamped and addressed, copies of the foregoing application for rehearing to Honorable Oscar W. Adams, Jr., 1630 N. Fourth Avenue, Birmingham, Alabama, and Honorable Charles S. Conley, 530 S. Union Street, Montgomery, Alabama, Attorneys for appellants, on this 21st day of October, 1964.

W. Mark Anderson III
W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

7TH DIV.

NO. 747

IN THE COURT OF APPEALS OF ALABAMA

MARVIN ROBINSON, ET. AL.,
APPELLANTS

VS.

STATE OF ALABAMA,
APPELLEE

APPEALED FROM THE CIRCUIT COURT OF
ETOWAH COUNTY, ALABAMA

BRIEF AND ARGUMENT IN SUPPORT OF APPLICATION FOR REHEARING

OF

RICHMOND M. FLOWERS
ATTORNEY GENERAL

AND

W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR APPELLEE

STATEMENT OF THE CASE

This Court on October 6, 1964, reversed the judgments of the trial court of Etowah County, Alabama, on the following ground:

That the trial court erred in denying the petition for the writ of habeas corpus.

ARGUMENT

The State filed a motion to dismiss this appeal as moot in that the appellants were out on bail. This Court held that said motion was not well taken stating:

> "The factual basis to support mootness is unlike that relied on in Ex parte McMillan, 15 Ala. App. 571, 74 So. 396 —— a matter within judicial knowledge. Rather the State has sought here to go outside the record by using an affidavit of the sheriff dated 83 days after final judgment. . . ."

This statement is correct —— as far as it goes. The State also relies on that part of the order of the trial court appearing on Page IV of the record wherein the court said:

> "It is further ordered and adjudged by the Court that Appearance Bonds for Petitioners herein be and the same are hereby set in the Equity Injunction Case, as follows: Bond for the eight (8) leaders fixed at Five Hundred ($500.00) Dollars, Bond for those 16 to 18 years of age fixed at Two Hundred ($200.00) Dollars, and Bond for all others fixed at Three Hundred ($300.00) Dollars."

In its original opinion this Court said:

> "However, the status of the petitioner on the date of the judgment appealed from is determinative as to whether there exists the physical restraint our cases refer to. . . ."

The record in the case at hand clearly shows that "on the date of the judgment appealed from" bond was available to the petitioners and there was lacking, therefore," the physical restraint our cases refer to". Even if the State conceded that this Honorable Court was correct in stating that the determining date as far as mootness is concerned is the date of the judgment (but as a practical matter, what difference can it make whether bond was available the day before, the day of, or the day after the judgment, if the petitioner is not restrained at the time of his appeal), since the record does affirmatively show a lack of physical restraint on the date of the judgment, the cases supporting a dismissal as moot, and they are legion, now apply even under the theory of this Court in its original opinion. Consequently, this appeal, on rehearing, should now be dismissed.

Respectfully submitted,

RICHMOND M. FLOWERS
ATTORNEY GENERAL

W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR APPELLEE

I hereby certify that I have mailed, properly stamped and addressed, copies of the foregoing brief and argument in support of application for rehearing to Honorable Oscar W. Adams, Jr., 1630 North Fourth Avenue, Birmingham, Alabama, and Honorable Charles S. Conley, 530 South Union Street, Montgomery, Alabama, Attorneys for Appellants, on this the 21st day of October, 1964.

W. Mark Anderson III
W. MARK ANDERSON, III
ASSISTANT ATTORNEY GENERAL

LAW OFFICES
CHARLES S. CONLEY
530 SOUTH UNION STREET
P. O. BOX 1973
MONTGOMERY 4, ALABAMA

AREA CODE 205
TELEPHONES: 269-2361
269-2362

NOV 2 1964

Rachlin
Rec'd 1/15/65

October 29, 1964

Mr. James Farmer, Director
CONGRESS OF RACIAL EQUALITY
38 Park Row
New York 38, New York

Re: Marvin Robinson, Et Al.,
Appellant,
VS.
State of Alabama

Dear Sir:

Enclosed herewith attached is a copy of an "Application for Rehearing", as filed by the State of Alabama in the State Court of Appeals. We are also enclosing a news clipping indicating that the application was overruled on yesterday, Wednesday, October 28, 1964.

Cordially yours,

Charles S. Conley
Charles S. Conley e.m.w.

CSC:emw
Encl:

2/2

January 26, 1965

Charles S. Conley, Esq.
530 South Union Street
P.O. Box 1973
Montgomery 4, Alabama

Dear Chuck:

Your letter to Jim Farmer dated October 29, 1964, concerning Marvin Robinson, just was passed on to me. That is the reason for the belated reply.

Please advise me as to the next steps in Marvin Robinson's case.

Best regards,

Carl Rachlin
General Counsel

CR:hdl

LAW OFFICES
CHARLES S. CONLEY
530 SOUTH UNION STREET
P. O. BOX XXX 4038
MONTGOMERY 4, ALABAMA

AREA CODE 205
TELEPHONES: 269-2361
269-2362

February 5, 1965

FEB 8' [illegible]

Carl Rachlin, Esq.,
CONGRESS OF RACIAL EQUALITY
38 Park Row
New York 38, New York

IN RE: MARVIN ROBINSON, ET AL.,
APPELLANTS

Dear Carl:

This is to acknowledge receipt of your letter dated January 26, 1965, with reference to the above styled cause.

Enclosed herewith attached is a copy of the petition for writ of certiorari to the Court of Appeals of Alabama, together with a brief in support of the petition.

If you desire further information or opinion as to what should be done, please advise.

Cordially,

Chuck

CHARLES S. CONLEY

CSC:mm
Enclosure

Dear Chuck
May I have your thoughts
as to what should be done
in Marvin Robinson
case
Regards
R

February 11, 1965

Charles S. Conley, Esq.
530 South Union Street
P.O. Box 4038
Montgomery 4, Alabama

Dear Chuck:

May I have your thoughts as to what should be done in Marvin Robinson's case?

Regards,

Carl Rachlin
General Counsel

CR:jp

will follow on April
1, 1965

4/20

April 5, 1965

Charles S. Conley, Esq.
530 South Union Street
P.O. Box 4038
Montgomery 4, Alabama

Dear Chuck,

I wonder what is happening with the Marvin Robinson case. Could you please drop me a line and let me have your thoughts on the matter?

Sincerely,

Carl Rachlin
General Counsel

CR:hdl

LAW OFFICES
CHARLES S. CONLEY
530 SOUTH UNION STREET
P. O. BOX 1973
MONTGOMERY 4, ALABAMA

AREA CODE 205
TELEPHONES: 269-2361
269-2362

APR 22 1965

April 20, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York 38, New York

Re: Marvin Robinson, et al.

Dear Carl:

I have, this day, checked the records in the office of the Attorney General of the State of Alabama, and find that the judgment of conviction was reversed and remanded by the Alabama Supreme Court to the Circuit Court of Etowah County for final disposition. Thereafter, the State moved for a rehearing which was denied.

The present status of the case indicates that the State of Alabama has petitioned for certiorari to the Alabama Supreme Court, where the case presently stands.

Yours very truly,

CHARLES S. CONLEY

CSC:mim

Areas of agreement entered into between CHARLES S. CONLEY, Attorney for all students dismissed from Alabama State College, Montgomery, Alabama, and President LEVI WATKINS, and DR. CLEMENT A. BRONSON, Director of Student Affairs, which was filed in the United States District Court as a basis for the complete reinstatement of all students previously dismissed on April 21, 1965, and which agreement, by order of the Court, was sealed by the Clerk of the Federal Court, as an appendix to the Court's original order, and of which the Court "expressly retained" jurisdiction of the entire matter submitted for decision.

1. These students must show genuine interest in furthering their education by regular and punctual attendance at all courses for which they are individually registered.

2. They recognize the rights of other students to further their own education through the orderly academic and cultural activities of the College, both class and non-class activities. We believe this recognition of the rights of other students must be shown by:

a. Refraining from any activities which disturb and/or interrupt classes and any other programs conducted at the College.

b. Respect for the duly constituted and delegated authority of the College.

c. The presentation of grievances to the proper officers of the College through the regularly established channels and with allowance of reasonable time for redress. The College considers that any demonstration, beyond those constitutionally protected which are in protest of grievances, prior to formal presentation of such grievances and the opportunity to consider redress to be acts void of respect for the rights of others.

d. While the college recognizes the right of students to engage in constitutionally protected demonstrations, it expects each student to respect the right of students who choose not to demonstrate and in so doing to have freedom from intimidation, harrassment and other interferences with their regular college and personal activities.

3. These student leaders are expected to encourage their followers to refrain from further acts of disturbances. The College does not wish to become victim of a discipline breakdown.

4. That students of Alabama State College will not disrupt classes under any conditions.

5. That they will seek to obtain permission from College officials regarding further demonstrations.

6. They will seek to obtain permission from appropriate State and local agencies for any and all off-campus demonstrations.

7. That the College administration will not prohibit orderly demonstrations which are not disruptive of school activities.

8. That the Administration and faculty will encourage the cooperation of students in an effort to maintain a free academic community.

9. That the administration agrees to permit student groups or organizations to recommend their own faculty advisors.

10. That the administration agrees to permit student and faculty to select speakers of their own choice and arrange meetings, provided that reasonable notice is given to school officials of such proposed meetings and that the administration, as well as the student-faculty sponsoring groups, will have the right to state that they neither approve nor disapprove of the views of the speaker.

11. That the administration will not restrict the rights of students to distribute pamphlets and leaflets, except to the extent that an effort is made to distribute them in the classrooms or study halls and responsibility for some is indicated.

12. That the administration will encourage and protect the rights of students to publish student publications unfettered by unreasonable faculty or administrative supervision.

/s/ Clement A. Bronson
DIRECTOR OF STUDENT AFFAIRS

/s/ Charles S. Conley
ATTORNEY FOR PLAINTIFFS

NOTE

The above agreement was entered into after a four hours conference between counsel for the plaintiffs and the present defendants in DIANE L. P. DICKERSON, et al. VS. WATKINS and ANOTHER. An answer to the Complaint previously filed was served on counsel for the plaintiffs on the 17th day of May, 1965.

LAW OFFICES
CHARLES S. CONLEY
530 SOUTH UNION STREET
P. O. BOX 1973
MONTGOMERY 4, ALABAMA

AREA CODE 205
TELEPHONES: 269-2361
269-2362

MAY 17 1965

May 15, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York 38, New York

Re: Marvin Robinson v. State of Alabama

Dear Carl:

Enclosed herewith is a card which apparently closes the matter involved.

Cordially yours,

Chuck
CHARLES S. CONLEY

CSC:mim
Enclosure

9 Div. No. 671 Etowah

Ex Parte State ex rel Attorney General
Petitioner.

Re Marvin Robinson, etal

vs.

State of Alabama
Respondent.

Dear Sir:

The Supreme Court today denied writ of certiorari to the Court of Appeals. No opinion was written.

Yours truly,

April 22 1965

J. RENDER THOMAS,
Clerk Supreme Court.

4¢
U.S. POSTAGE

THIS SIDE OF CARD IS FOR ADDRESS

Charles S. Conley
Attorney at Law
332 South Union Street
Montgomery, Alabama

STRIKE BACK AT CANCER
GIVE
AMERICAN CANCER SOCIETY

MONTGOMERY
APR
PM
1 5

MSS
546

SEDFRE

ALEXANDER, EGYPTINE, VS. 141 W. 95th ST. INC. BROOKLYN, NEW YORK 1967
(HOUSING)

Box
Folder

State Historical Society Of Wisconsin

Please Retain Original Order

U.O.P.
Office Copy

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Mrs. Egyptine Alexander, Mr. Sam Clark,

Mr. Louis Garcia, Mrs. Pauline Michel.

NOTICE OF PETITION

Pursuant to 7A of
the Real Property
Actions and Proceedings
Law

AGAINST

141 West 95th Street Inc., (landlord)
302 Schenectady Avenue
Brooklyn New York
- and -
Halpern 95th Street Inc., (Mortgagees)
207 West 145th
New York, New York

Fred H. Hill Associates,
9 East 53rd Street
New York, New York

Respondents

THE PEOPLE OF THE STATE OF NEW YORK

TO: THE RESPONDENT LANDLORD AND MORTGAGEES

PLEASE TAKE NOTICE, that a hearing will be held at the Civil Court of the City of New York, County of New York, at the Courthouse thereof, at 111 Centre Street, New York, N.Y., at a Trial Term Part II, thereof, on the 29th day of March, 1967 at 9:30 o'clock in the forenoon of that day, on the annexed petition and exhibits, said petition having been signed by the above-mentioned tenants and designating the tenant, Mrs. Egyptine Alexander as their representative, verified on the 20th day of March, 1967, which prays for a final judgement directing that the rents due on the date of entry of such judgment from the petitioning tenants and the rents due on the date of service of such judgment on all other tenants shall be deposited with the clerk of the Court, and any rents to become due in the future from such tenants-petitioners and from all other tenants occupying such multiple dwelling shall be deposited with such Clerk as they fall due; and that such deposited rents shall be used, subject to the Courts's direction, to the extent necessary, to remedy the conditions alleged in the petition, and for such other and further relief as to the Court may appear just and proper.

PLEASE TAKE NOTICE, also, that if at such time, the owner, or any mortgagee of record, fails to interpose and establish a defense to the allegations of the petition, that a final judgment by default may be rendered as demanded in the Petition and you may be precluded from asserting any such defense of claim on which it is based in any further proceeding or action.

PLEASE TAKE FURTHER NOTICE, that if this Notice of Petition is served upon you at least eight days before the time which it is noticed to be heard, you must answer at least three days before the petition is noticed to be heard, either orally before the Clerk in his office, or, if you answer in writing by serving a copy there of upon the attorney for the petitioners and by filing the original of such written answer, with proof of service thereof, in the office of the Clerk, at least three days before the time the petition is noticed to be heard. In addition, you must nevertheless appear before the Court at the time and place hereinabove set forth for the hearing.

Dated : New York, New York

March 30th, 1967

Stephen M. Nagler
Office & P.O. Address
Rm. 1030
150 Nassau Street
New York, New York 10038

964-8210
Attorney for Petitioners

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Mrs. Egyptine Alexander, Mr. Sam Clark,
Mr. Louis Garcia, Mrs. Pauline Michel.

NOTICE OF
PETITION

Pursuant to
Article 7A
of the Real
Property Actions
and Proceedings
Law

AGAINST
141 West 95th Street Inc., (Landlord)
302 Schenectady Avenue
Brooklyn, New York
-and-
Halpern 95th Street Inc., (Mortgagees)
207 West 145th St.
New York, New York

Fred H. Hill Associates,
9 East 53rd Street
New York, New York

Respondents

The petition of the above-mentioned tenants, asking the relief herein and appointing Mrs. Egyptine Alexander, one of the tenants, their representative, for themselves and on behalf of all the tenants in premises 141 West 95th Street, New York, New York by their attorney, Stephen Nagler, hereby allege:

1. That the petitioners are tenants in occupancy in premises 141 West 95th Street, New York, New York a multiple dwelling containing on information and belief eleven (11) apartments situated within the territorial jurisdiction of the Civil Court of the City of New York, County of New York and make this petition on behalf of themselves, being four (4) tenants of the seven (7) residing in the said building and thus constituting more than one-third of the tenants in occupancy of the said premises.

2. That upon information and belief, 141 West 95th Street Inc. is the owner of record of said premises, a multiple dwelling containing on information and belief eleven (11) apartments.

3. That upon information and belief, the above-named are mortagees of record of the premises herein. That upon information and belief, there are no lienors of record of said premises.

4. That there exist and have existed, for a period of more than five days in such multiple dwelling and/or the individual apartments contained therein, the following conditions, all of which consitute a danger to the safety and health of the tenants:

EXISTING CONDITIONS DANGEROUS TO LIFE, HEALTH OR SAFETY

EXTERIOR:

1. No exterior lights at entrance
2. First tread of stoop has drepression - Tripping hazard
3. Entrance door step chipped - Slipping hazard
4. Slab (1 Sq. ft.) of Brownstone facing spalling off 2 stories above entrance door - Potentially lethal
5. Basement forecourt (areaway) - full of debris and mud
6. Metal cornice - rusting and sagging
7. Rear yard - littered with lumber and debris
8. Roof - skylight missing caulking. Has punctured light; loose bricks on chimneys; holes in roofing.

PUBLIC SPACES :

1. Vestibule - No communication system; No mailboxes; No light fixture.
2. Hallways - Loose floor boards can be removed by hand (first floor); carpeting and linoleum badly worn - tripping hazard; light intensity insufficient to see floors and stairs.
3. Stairs - Carpeting badly worn
4. Balusters loose on run between 2nd and 3rd floors; risers loose; second floor ceiling wet and sagging.

CELLAR:

1. Lead soil pipe patched with tape
2. Active 4" soil pipe at floor level broken and open to room with effluent overflowing onto floor - health hazard.
3. Vault (Utilities Entry) littered with oil soaked debris- oil spillage from fill box
4. Hot water pipe badly corroded - Has five temporary patches within five foot length
5. Wood posts supporting floor of rear wing rotted at floor of crawl space.
6. Wood stair stringers rotted - Stair sinking
7. Boiler room - Door has no latch, spring hingers are broken; no fresh air intake for combustion air

HEATING SYSTEM:

Consists of an oil fired, one pipe, air vent steam system feeding cast iron radiation in most rooms. (Building Dept., inspection notice gives maximum working pressure of boiler as 15 p.s.i.) Burner is controlled by thermostat located in first floor hallway and by 24 hour time clock with six cams. Boiler water level control requires manual draining at least every two weeks at all times of the year. Domestic hot water is generated by a tankless heater feed from boiler steam. Deficiencies observed: Boiler was maintaining a pressure of 17½ p.s.i. - excessive; boiler controls out of adjustment - burner fires for 10 to 20 seconds every few minutes, causing wasted fuel and polluted air.

ALL APARTMENTS: Presence of rodents; kitchen exhaust ventilation system not working (no windows); little or no work surface in kitchen.

APARTMENT No. 3 (first floor, rear):

Living Room - Three lights of glass cracked

Kitchen - Steel casement window has no latch permitting drafts; ranger oven rusted out and burners out of adjustment; refrigerator door handle broken off - housewife cannot open door.

Bathroom - Holes in walls large enough for roddnts to enter; baseboard rotted; toilet seat peeling exposing pourous core - unsanitary; ceiling paint peeling profusely.

APARTMENT No. 4 (first floor, front):

Living Room - Loose plaster at ceiling and loose ceiling fixture threaten tenants' safety

Kitchen - Hole in wall under sink large enough for roder to enter; heavy plaster rosette on ceiling in danger of falling; hole in floor - tripping hazard.

APARTMENT No. 5 (second floor, rear):

Living Room - Light fixture loose - fire and safety hazard; hole in floor at steam riser permits rodents to enter; window cracked and sash very loose; only one electric outlet - inadequate for power demand and safety entrance door split at makeshift hinge arrangement - poor security.

Kitchen - Ceiling plaster loose and damp from leaks-safety hazard; large holes around piping under sink large enough for rodents to enter; unprotected electric panel in back of coat closet-fire hazard; gas range oven badly rusted and unusable, dangerous continuous gas leak at valve for center burner (leak supports a flame); very old refrigerator badly worn and unsanitary.

APARTMENT No. 6 (second floor, front):

Living Room - Loose floor boards - tripping hazard; window sash does not close completely; only one electric outlet - inadequate for power demand and safety.

Kitchen - Ceiling leaks; oven does not work; refrigerator door does not close tightly.

Bathroom - (second floor): Window glass cracked - safety hazard; no lock on window (fire escape outside); toilet seat broken, finish peeling off - unsanitary; no working latch or bolt on door; closet full of combustable debris - fire hazard.

APARTMENT No. 9 (third floor, rear):

Living Room - Roof leaks during rainstorms and water enters through loose ceiling light fixture occasionally causing short circuiting: cold air enters through fireplace - no damper;

Kitchen - Exhaust vent register covered by paint; sink drain patched with tape; refrigerator gasket rotted away - unsanitary, roaches enter; section of flooring rotted at kitchen door; holes in wall under sink - large enough for rodents to enter.

TOILET ROOM (third floor):

Toilet seat finish peeling off exposing pourous core - unsanitary; no working bolt or latch - no privacy; door does not close tightly; no heating device.

BATHROOM (third floor):

Linoleum floor badly worn - unsanitary; partition between bathroom and hallway does not extend to ceiling - limited privacy; plaster falling off wall into bathtub; no sanitary base or wainscot; overflow drain on sink not working - spillage from overflow deteriorating flooring.

UTILITY CLOSET (third floor):

Cluttered with combustable debris - fire hazard

5. That there is due from each petitioning tenant a monthly rental as set forth in Column I of Schedule A annexed hereto and made a part hereof and there is now owing from each tenant the rent money set forth in Column II of said Schedule A.

6. That upon information and belief, the work required to be done to correct the conditions summarized in Paragraph "4" above will cost approximately nine thousand seven hundred and seventy three dollars ($9,773.00) as set forth in more particular detail in Schedule B attached hereto and made a part hereof.

WHEREFORE, Petitioners pray that a final judgment be entered directing that the rents due on the date of entry of such judgment from the petitioning tenants and the rents due on the dates of service of the judgment on all other tenants occupying such multiple dwelling from such other tenants shall be deposited with the Clerk and any rents to become due in the future from such petitioners and from all other tenants occupying such multiple dwelling shall be deposited with such Clerk as they fall due; and that an Administrator be appointed by the Court to receive such monies either directly, or from said Clerk and to use the said rents, subject to the Court's direction to the extent necessary to remedy the conditions alleged in the petition and for such other and further and different relief as to this Court may seem just and proper.

Dated: New York, New York
March 29th, 1967

SCHEDULE A

TENANT	Column I MONTHLY RENT	Column II RENT OWED
Egyptine Alexander	$78.00 monthly @ $18.00 per week	NONE
Sam Clark	$82.00 monthly @ $19.00 per week	NONE
Louis Garkia	$78.00 monthly @ $18.00 per week	NONE
Pauline Michel	$73.66 monthly @ $17.00 per week	NONE

SCHEDULE B

DESCRIPTION OF WORK AND ESTIMATE OF COST
To Remedy Deficient Conditions of Multiple
Dwelling Located at 141 West 95th Street

DIVISION	SCOPE OF WORK	COST
1. GENERAL	- Clean up at completion of work.	$100.00
2. DEMOLITION	- Remove cornice and bracing; closet - apt No. 5; partition at 3rd fl. bath.	50.00
	Removal of debris incl. trucking	150.00
3. (NOT USED)		
4. MASONRY	- Patch stoop entrance step and brownstone facing	200.00
	- Finish brick parapet where existing coping is removed, add coping and stucco front; point brickwork at chimneys and west wall.	300.00
	- Chemically remove oil from vault	50.00
	- Cut beam pockets and set steel beam to shore-up basement floor	50.00
5. METALS	- Steel beam and clip angles for basement floor.	30.00
	Steel basement stair & handrail	250.00
6. CARPENTRY	- Allowance for patching of wood flooring and base to match existing.	200.00
	- Repair stair railing and replace balusters.	75.00
	- Shim joists at new steel beam.	25.00
	- Rebuild clothes closet at new location - apt No. 5 (including doors)	110.00
	- Allowance for repair of defective wood windows and door frames.	200.00
	- New dry wall partition to ceiling - 3rd fl. bath	150.00
	- New enameled hardboard wainscot	90.00
7. MOISTURE PROTECTION	- Patch and mop roof at splits, holes and weak seams; flash new parapet wall at front, provide exhaust vent thimble (s)	300.00
8. DOORS WINDOWS AND GLASS	- New hollow metal door, frame and hardware for apt. No. 5	140.00
	- Allowance for door and window hardware.	100.00

	- Fusable link louver for boiler room	20.00
	- Glass and glazing repairs	150.00
9. FINISHES	- Lathing for plaster ceiling and wall repairs	50.00
	- Plaster for the above	100.00
	- Painting, interior - for repaired plaster, wood and metal surfaces	150.00
	- Premolded rubber stair treads	150.00
	- Resilient flooring for hallways and 3rd floor bath. 260 sq ft. @ $.50	130.00
	- Rubber base - 3rd floor bath	8.00
	- Fitted rubber vestibule mat	25.00
10. EQUIPMENT	- New gas ranges, 20" - 8@$100.00	800.00
	- New refrigerators, 11 cu. ft 4 @ $150.00	600.00
11 THRU 14 (NOT USED)		
15A. PLUMBING	- Disconnect and reinstall 3rd floor bath sink	20.00
	- Repair corroded "P" traps	50.00
	- Repair soil line at cellar floor including concrete removal and replacement	50.00
	- New toilet seats, 4@ $10	40.00
	- Replace corroded water piping in cellar	50.00
15B. HEATING & VENTILATION	- Adjust and set boiler and burner controls for proper operation, post operating instructions (Bi-lingual) provide locked cover for thermostat, Allowance for time and material	100.00
	Allowance for radiator vents	25.00
	Exhaust vent fans with back draft louvers. 2 @ $100.00	200.00
	Block fireplace (sheetmetal)	10.00
16. ELECTRICAL	- Light fixtures -2 exterior, 1- vestibule, 1- stairs - allowance	30.00
	- Wiring and panel for the above	200.00
	- Wiring and panel for electric heater at 3rd floor toilet	150.00
	- Heater for above	20.00
	- Replace faulty fluorescent ceiling fixture in apartments with incandescent fixtures allowance	100.00

- 2 New 15A outlet circut for apartments No. 5 & 6 including panel service	100.00
- Combination mailbox /directory/ inter communication panel (recessed) and electric door release with wiring to 6 apartments for call boxes with electric door release button, transformer	900.00
Sub Total	$6,798.00
Overhead and Profit 25%	1,700.00
	8,498.00
15% Contingency for unforeseen conditions	1,275.00
Total. This estimate	$9,773.00

Dated: MARCH 20, 1967

William J. Jacquette Jr.
William J. Jacquette, Jr., Architect

REGISTERED ARCHITECT
WILLIAM J. JACQUETTE JR.
No. 8634
UNIVERSITY OF THE STATE OF NEW YORK

July 1, 1967

Mr. Stephen M. Nagler, Attorney
150 Nassau Street
New York, New York

Dear Sir:

Please be advised that on June 30th, 1967 I moved from building located at 141 W. 95th Street, New York, N. Y., Apt.No.10 on the 3rd floor.

I have today mailed keys of the above mentioned apartment to the Landlord, Mr. Jacob Frankel, as per enclosed copy of my letter to him.

As per agreement, I expect a check in the amount of $100.00, plus $51.00 representing 3 weeks rent which are to be refunded to me.

Your prompt attention to this matter will be greatly appreciated.

Very truly yours,

Pauline Michel

Mrs. Pauline Michel
c/o Mrs. Dominga Malebranche
205 West 88th Street Apt.10-A
New York, New York

Klein

July 5, 1967

Mr. Stepehn M. Nagler, Escrowee
Scholarship, Education and Defense Fund for
Racial Equality Inc.
150 Nassau Street
New York, New York 10038

Dear Sir:

On July 1st, I addressed a letter to you, without using the name of the organization for which you are acting as escrowee.

I am writing again today to confirm that on June 30th I moved from apartment #10 of the third floor of building No.141 West 95th Street. The keys of said apartment were mailed to the landlord, Mr. Jacob Frankel, on July 1st, 1967.

I expect a check to cover the $100.00 as per agreement, and $51.00 representing 3 weeks rent which are to be refunded to me. I am therefore expecting a check totalling $151.00.

Thanking you for your prompt attention to this matter, I am

Very truly yours,

Pauline Michel

Mrs. Pauline Michel
c/o Mrs. Dominga Malebranche
205 West 88th Street, Apt.9-A
New York, New York

C O P Y

Mr. Jacob Frankel
P. O. Box 82
Brooklyn, New York

Dear Sir:

Enclosed please find 2 keys, one for the front door and the other for apartment #10 of the third floor located at 141 W. 95th Street, New York, N. Y.

Please be advised that I moved from the above mentioned apartment on June 30, 1967.

Very truly yours,

(s) Mrs. Pauline Michel
c/o Mrs. Dominga Malebranche
205 West 88th Street Apt.9-A
New York, N. Y.

SEGAL, WERNER & SEGAL
COUNSELORS AT LAW
825 SARATOGA AVENUE
BROOKLYN, N. Y. 11212

EV 5-3930

EDWARD A. SEGAL
JOSEPH WERNER
JERALD SEGAL

July 21, 1967

Scholarship, Education and Defense
Fund for Racial Equality
150 Nassau Street
New York, N. Y. 10038

Att: Stephen Hill

Re: 141 West 95th Street

Dear Mr. Hill:

I am forwarding to you the following checks:

Check for Sam Clark for $300.00;
Check for Pauline Michel for $100.00;
Check for Luis Garcia for $328.00.

I would appreciate that you have them come into your office rather than mailing them out in view of the fact that many checks are being stolen from mailboxes these days.

Very truly yours,

SEGAL, WERNER & SEGAL

by____________________

JW:ak
Enc.

House is furnished.

Steve

I filled in as much info. as I could.

The deed is in J. Frankel's name or 141 W 95th St Inc.

The mortgages are 2;

Halpern 95th St Inc. $22,500.00

Fred H. Hill Assoc Inc. $4,800.00

Frankel owns 1 other building as far as I know. It is 145 W 95th

Mortgages on that are

Amoroso Bldng. Corp $6,819.45

Manuf Han. Trust $107,400.00

~~Amoroso now due~~

Bob Oliver

(you have copies of architect report)

Mortgages

Serial No.
M 9414
Morgagor - Jacob Frankel Inc.
Mortgagee - Halpern 95th St Inc.
Amt. 22,500.00
D.O.R. Oct 29, 1965
Liber 6427
Pg 262

Serial No.
M 9415
Morgagor - Jacob Frankel Inc.
Mortgagee - Fred H. Hill Associates, Inc.
Amt. $4,800
D.O.R. Oct 29, 1965
Liber 6427
Pg 266

Buildings

95 St. (Deed)

Frankel Inc.

12, 1965

norgagor)

Frankel Inc.

gagee)

moroso Building Corp. 6,819.45

July 12, 65

nufact. Han. Trust 107,400.00

June 14 1966

---

orgagor)

Amoroso Bldg. Corp.

(Morgagee)

Dorrit Concourse Corp.

June 14, 66

Assign mg now due $6,819.45

Deeds.

141 W95 St.

Block 1226

Index Lot No. 16

Serial No. 06554

Grantor Halpern 95 St Inc.

Grantee Jacob Frankel Inc

302 Schenectady ave B.NY.

Date of Record Oct. 29, 1965

Serial No. 3224

Grantor Jacob Frankel Inc.

Grantee 141 W95 St Inc

302 Schenectady ave

Brooklyn, N.Y.

Date of Record Mar. 2, 1966

Subject to, Deed.

SCHEDULE A

TENANT	MONTHLY RENTAL COLUMN I	RENT OWED AT PRESENT COLUMN II

REPORT OF INSPECTION OF MULTIPLE DWELLING

INSPECTOR : William J. Jacquette Jr., Reg. Architect (N.Y.)
DATES OF INSPECTION: Dec 17 and 19, 1966
BUILDING LOCATION : 141 West 95th Street Block No. 1226 Lot No. 16, Borough of Manhattan, City of New York
NUMBER OF DWELLING UNITS : 8 Efficiency type.
NUMBER OF FLOORS Cellar (Utility plus basement and three floors (Dwelling) R
BUILDING SERVICES : Resident Superintendent, Cleaning of public spaces and basement appears to be poor. Repairs have been makeshift and minimal, and evidently have not been made by qualified tradesmen.

EXISTING CONDITIONS DANGEROUS TO LIFE, HEALTH OR SAFETY

EXTERIOR :

1. No exterior lights at entrance
2. First tread of stoop has depression - Tripping hazard
3. Entrance door step chipped - Slipping hazard
4. Slab (1 Sq. ft.) of Brownstone facing spalling off 2 stories above entrance door - Potentially lethal.
5. Basement forecourt (areaway) - full of debris and mud
6. Metal cornice - rusting and sagging
7. Rear yard - littered with lumber and debris
8. Roof - skylight missing caulking.
9 Has punctured light; loose bricks on chimneys; holes in roofing.

PUBLIC SPACES :

1. Vestibule - No communication system; No mailboxes; No light fixture.
2. Hallways - Loose floor boards can be removed by hand (first floor); carpeting and linoleum badly worn - tripping hazard; light intensity insufficient to see floors and stairs.
3. Stairs - Carpeting badly worn
4. Balusters loose on run between 2nd and 3rd floors; risers loose; second floor ceiling wet and sagging.

CELLAR :

1. Lead soil pipe patched with tape
2. Active 4" soil pipe at floor level broken and open to room with effluent overflowing onto floor - health hazard.
3. Vault (Utilities Entry) littered with oil soaked debris - oil spillage from fill box

4. Hot water pipe badly corroded - Has five temporary patches within five foot length
5. Wood posts supporting floor of rear wing rotted at floor of crawl space.
6. Wood stair stringers rotted - Stair sinking
7. Boiler room - Door has no latch, spring hingers are broken; no fresh air intake for combustion air

HEATING SYSTEM:

Consists of an oil fired, one pipe, air vent steam system feeding cast iron radiation in most rooms. (Building Dept., inspection notice gives maximum working pressure of boiler as 15 p.s.i.) Burner is controlled by thermostat located in first floor hallway and by 24 hour time clock with six cams. Boiler water level control requires manual draining at least every two weeks at all times of the year. Domestic hot water is generated by a tankless heater feed from boiler steam. Deficiencies observed: Boiler was maintaining a pressure of 17½ p.s.i. - excessive; boiler controls out of adjustment - burner fires for 10 to 20 seconds every few minutes, causing wasted fuel and polluted air.

ALL APARTMENTS : Presence of rodents; kitchen exhaust ventilation system not working (no windows); little or no work surface in kitchens.

APARTMENT No. 3 (first floor, rear):

Living Room - Three lights of glass cracked

Kitchen - Steel casement window has no latch permitting drafts; ranger oven rusted out and burners out of adjustment; refrigerator door handle broken off - housewife cannot open door.

Bathroom - Holes in walls large enough for rodents to enter; baseboard rotted; toilet seat peeling exposing pourous core - unsanitary; ceiling paint peeling profusely.

APARTMENT No. 4 (first floor, front):

Living Room - Loose plaster at ceiling and loose ceiling fixture threaten tenants' safety

Kitchen - Hole in wall under sink large enough for rodents to enter; heavy plaster rosette on ceiling in danger of falling; hole in floor - tripping hazard.

APARTMENT No. 5 (second floor, rear):

Living Room - Light fixture loose - fire and safety hazard; hole in floor at steam riser permits rodents to enter, window cracked and sash very loose; only one electric outlet - inadequate for power demand and safety entrance door split at makeshift hinge arrangement - poor security.

Kitchen - Ceiling plaster loose and damp from leaks - safety hazard; large holes around piping under sink large enough for rodents to enter; unprotected electric panel in back of coat closet - fire hazard; gas range oven badly rusted and unusable, dangerous continuous gas leak at valve for center burner (leak supports a flame); very old refrigerator badly worn and unsanitary.

APARTMENT No. 6 (second floor, front):

Living Room - Loose floor boards - tripping hazard; window sash does not close completely; only one electric outlet - inadequate for power demand and safety.

Kitchen - Ceiling leaks; oven does not work; refrigerator door does not close tightly.

Bathroom - (second floor): Window glass cracked - safety hazard; no lock on window (fire escape outside); toilet seat broken, finish peeling off - unsanitary; no working latch or bolt on door; closet full of combustable debris - fire hazard.

APARTMENT No. 7 (third floor, rear):

Living Room - Roof leaks during rainstorms and water enters through loose ceiling light fixture occasionally causing short circuiting: cold air enters through fireplace - no damper;

Kitchen - Exhaust vent register covered by paint; sink drain patched with tape; refrigerator gasket rotted away - unsanitary, roaches enter; section of flooring rotted at kitchen door; holes in wall under sink - large enough for rodents to enter.

TOILET ROOM (third floor):
Toilet seat finish peeling off exposing pourous core - unsanitary; no working bolt or latch - no privacy; door does not close tightly; no heating device.

BATH ROOM (third floor):
Linoleum floor badly worn - unsanitary; partition between bathroom and hallway does not extend to ceiling - limited privacy; plaster falling off wall into bathtub; no sanitary base or wainscot; overflow drain on sink not working - spillage from overflow deteriorating flooring.

UTILITY CLOSET (third floor):
Cluttered with combustable debris - fire hazard

FORM SR-1
(REV. 7/61)

THE CITY OF NEW YORK

DEPARTMENT OF BUILDINGS

MANHATTAN
MUNICIPAL BUILDING
NEW YORK 7, N. Y.

BRONX
1932 ARTHUR AVENUE
BRONX 57, N. Y.

BROOKLYN
MUNICIPAL BUILDING
BROOKLYN 1, N. Y.

QUEENS
120-55 QUEENS BLVD.
KEW GARDENS 24, L. I.

RICHMOND
BOROUGH HALL
ST. GEORGE 1, S. I.

Beulah Ruiz
Urban Opportunities program
666 Columbus Av
NYC N.Y.

Date: OCT 17 1966

Date Requested: 10/5/66

Your Reference : Title #

Our Reference : Search Clerk

REPORT OF SEARCH

Premises 141 W 95th St Search # 538185

A search of the records of this department reveals that the following violations are pending. Copies of the violations, if any, are enclosed. DATE OF SEARCH INDICATES LAST DATE OF POSTING

Building Division, Violation Numbers: Date of Search 10/5/66

None

Housing Division, Violation Item Numbers: Date of Search 10/14/66

Copy Attached

Classification (if requested) HACB

Occupancy

Other City Agencies (on Multiple Dwellings only): Date of Search 10/6/66

None

IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE

Department of Buildings Violations and Classification:

Nature of Report: The above information is based solely on the records of the department on the search date indicated. No inspection of the premises was involved in this search. There may be violations or changes in classification or occupancy of which this department has no knowledge and therefore do not appear in the record. Such violations or changes in classification or occupancy can be determined by a properly authorized search inspection upon payment of the prescribed fee.

Construction in Progress: Furthermore, this search does not include information regarding any violations or changes in classfication or occupancy which may be involved in connection with any alteration or other application which is on file in this department and which has not been fully completed.

Other City Agency Violations or Other Corrective Orders (on Multiple Dwellings only):
Information is received from the Fire Department, Department of Health, Department of Air Pollution Control and the Department of Water Supply, Gas & Electricity. This may not represent all outstanding violations or other corrective orders on our date of search since other agencies may take 72 hours in reporting and the additional time spent in receiving and recording in this department must also be considered.

Isadore M. Cohen
BOROUGH SUPERINTENDENT

By:

IFICATION:

DATE	INITIALS	BADGE NO.
10-14-66	EB	8183

THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS

LIST OF PENDING VIOLATIONS

FORM 1036 (REV. 4/65) PART C - 180M - 502246 (66) 4-L

9-14-66
LST PUB PT INSP

PAGE 1

PREMISES	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
141 WEST 95 STREET	MANH	479	01226	0016	HACB	116261	SEP 28, 1966

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS	B ROOMS	OTHER	CNS
PNDG INSPECTOR REC REINSP	9-14-66	003	0003	0011	00	7

TYPE OF INSPECTION

REASON

NAME AND ADDRESS OF: OWNER
JACOB FRANKEL
302 SCHENECTADY AVE
BROOKLYN, N.Y. 11213

DATE REPORTED	*PRV RPT	INSP. REPT. 1ST	INSP. REPT. 2ND	ITEM	ORDER	SECTION OR COMPLAINT NO / VIOLATION DESCRIPTION
10-25-63	X			25	631	*D26-3.22 ADM CODE OBTAIN PERMIT FOR CURRENT YEAR TO OPERATE ABOVE MULTIPLE DWELLING CONTAINING ROOMING HOUSE ACCOMMODATIONS OR ROOM OR ROOMS USED FOR SINGLE ROOM OCCUPANCY.
2-2[illegible]				30	296	77 M/D LAW RESET, SO AS TO SECURE A PROPER AND TIGHT CONNECTION, THE WATER CLOSET BOWL AT 3 STY PUBLIC HALL WATER CLOSET COMPARTMENT.
5-10-65	D			33	44	78 M/D LAW REPAIR THE BROKEN OR DEFECTIVE PLASTERED SURFACES AND PAINT IN UNIFORM COLOR THE WALLS & CEILING 3 STY PUBLIC HALL WASHBASIN & BATHTUB COMPARTMENT.
7-08-65	X			38	618	*D26-3.18 ADM CODE FILE WITH THE BOROUGH SUPERINTENDENT OF THIS DEPARTMENT A SPRINKLER TEST REPORT FOR THE CURRENT YEAR.
5-25-65	X			39	18	35 M/D LAW PROVIDE AT LEAST TWO LIGHTS OF NOT LESS THAN 50 WATTS INCANDESCENT LIGHTING ON THE EXTERIOR OF THE BUILDING ON EACH SIDE OF FRONT ENTRANCE-WAY AND KEEP SAME BURNING FROM SUNSET TO SUNRISE.

PRINC. HOUSE NO.	STREET CODE	SC B-AREA				
0000141	35670	8179	Search 538185	Beulah Ruiz N	1	PAGE 2 CONTINUED ON

*PRV. RPT. (PREVIOUS REPORT): EXPLANATION OF PREVIOUS REPORT SYMBOLS

1-9 NO ACCESS
D DEFECT LETTER ISSUED
E PREVIOUSLY RECOMMENDED TO COURT

N NOT COMPLIED WITH
P VIOLATION PREVIOUSLY REPORTED
V VIOLATION REPORTED

X COURT ACTION RECOMMENDED
W WAIVED TO SUPERVISOR

OWNERSHIP:

THE OWNER OF EVERY MULTIPLE DWELLING WHETHER INDIVIDUAL OR CORPORATION MUST FILE A REGISTRATION STATEMENT WITH THIS DEPARTMENT (Sec. D26-3.1, Admin. Code).

WHENEVER OWNERSHIP OF A MULTIPLE DWELLING IS TRANSFERRED OR SOLD, THE FORMER OWNER SHALL FILE WITH THIS DEPARTMENT WITHIN FIVE DAYS (5) A WRITTEN STATEMENT CONTAINING THE NAME AND RESIDENCE AND BUSINESS ADDRESS OF THE NEW OWNER (Sec. D26-3.1c2).

RIFICATION:		
DATE	INITIALS	BADGE NO.

THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS

FORM 1036 (REV. 4/65) PART C - 180M - 502246 (66) 4-L

LIST OF PENDING VIOLATIONS

9-14-66
LST PUB PT INSP

PAGE 2

PREMISES	BORO	AREA	BLOCK	LOT	CLASS	REG. NO.	DATE ISSUED
141 WEST 95 STREET	MANH	479	01226	0016	HACB	116281	SEP 28, 1966

PRESENT STATUS OF PREMISES	LAST INSPECTED	STY'S	APTS.	B ROOMS	OTHER	CNS
PNDG INSPECTOR REC REINSP	9-14-66	003	0003	0011	00	7

TYPE OF INSPECTION

REASON

NAME AND ADDRESS OF: OWNER
JACOB FRANKEL
302 SCHENECTADY AVE
BROOKLYN, N.Y. 11213

DATE REPORTED	*PRV RPT.	INSP. REPT. 1ST	INSP. REPT. 2ND	ITEM	ORDER	SECTION OR COMPLAINT NO.	VIOLATION DESCRIPTION
5-23-66	X			40	17 *	26, 37, 64 M/D LAW	PROVIDE ADEQUATE LIGHTING AT LEAST 40 WATTS INCANDESCENT OR EQUIVALENT ILLUMINATION YARD.

LAST ITEM NUMBER 40

Note:-*AFTER ORDER NUMBER DENOTES RENT IMPAIRING ITEM - SEC 302-A MDL.

BY ORDER OF THE SUPREME COURT, N. Y. COUNTY, DATED 10/4/66, ORDER #17 HAS BEEN DELISTED AS A RENT IMPAIRING VIOLATION UNTIL FURTHER NOTICE.

PRINC. HOUSE NO.	STREET CODE	SC-B-AREA		CONTINUED ON
0000141	35670	8179	N 06 1	

*PRV. RPT. (PREVIOUS REPORT): EXPLANATION OF PREVIOUS REPORT SYMBOLS

1-9 NO ACCESS
D DEFECT LETTER ISSUED
E PREVIOUSLY RECOMMENDED TO COURT
N NOT COMPLIED WITH
P VIOLATION PREVIOUSLY REPORTED
V VIOLATION REPORTED
X COURT ACTION RECOMMENDED
W WAIVED TO SUPERVISOR

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FORM FOR WELFARE TELEPHONE CALLS

Client's Name Alexander Date

Address Tel# 866 1592

Welfare Center Tele #

Client's Case Worker Unit

Case # No. in family

Referred by:

See: Mrs. Description of Case or Problem

Nagler, Frankel put money on Fri, 22nd ~~$315~~ $128

Alex. has moved

supposed to do it before June 14

Mrs Frankel's phone: Box 82

~~BR~~ PR 85075

Alex 856 West End Ave

~~ap 401 A~~ apt. 1-A

8661592 call 5 pm

Action Taken

Werner Wanor Seigul

By

825 Saratoga

EV5 3930

Werner - att. for

landlord Frankel

SEDFRE
16

FRANKLIN, B. VS. NORTH CAROLINA 1967
(POSESSION of MARIJUANA)

Box 34
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STATE OF NORTH CAROLINA)
) IN THE SUPERIOR COURT
COUNTY OF ONSLOW)
December Term 1966
STATE OF NORTH CAROLINA)
) Criminal Docket 5709
--vs--)
)
FRANKLIN B. ANDERSON) TRANSCRIPT OF TESTIMONY

Tried before the Honorable Joseph W. Parker, Judge of Superior Court, and a jury, at Jacksonville, N. C., December 5, 1966.

Solicitor Walter T. Britt, Clinton, N. C., for the State of North Carolina.

Godwin & Cameron, Jacksonville, N, C., appearing for the Defendant.

* *

The defendant upon being arraigned on a charge alleging that he did unlawfully, wilfully and feloniously have in his possession a quantity of marajuana narcotics, he not being authorized by law to possess same, through his counsel entered a plea of not guilty.

WHEREUPON the jury was impanelled and sworn.

* *

PROCEEDINGS

MR. CREATURO

A witness for the State upon being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Britt) Mr. Creaturo, how are you employed?

A. I am employed as special agent for the Naval Intelligence at Camp LeJeunne, N. C.

Q. How long have you been in that capacity?

a. Approximately two and a half years.

Q. Do you know the Defendant in this case, Franklin Anderson?

A. I do.

Q. He is charged in a bill of indietment alleging that on the 21st of April of this year, he did unlawfully, wilfully and feloniously have in his possession a quantity of marajuana which is a narcotic under the General Statutes of North Carolina, he not being authorized by law to possess such narcotic drug. Did you have occasion to have a conversation with the defendant along about the 21st of April or just prior to that time?

A. Yes, I did.

Q. And what was the conversation about that you had with him? That was out at the base, was it?

A. Yes, I had occasion to talk to him at the base in the morning hours of the 21st. He telephone to our office and asked to speak to me in connection --

#2-Mr Creaturo

Q. The Defendant telebhone your office and asked to speak to you?

A. Yes, in regard to investigation that we had been conducting on another matter at the base.

Q. Another matter, one concerning him?

A. Yes, in which he was concerned.

Q. Then what did you do? Just go ahead and, after that telephone conversation that you received from the defendant, go ahead and tell what you next did with respect to the conversation?

A. The defendant related to me over the telephone that he had information pertaining to this investigation and he asked me if he could talk to me about it, and I said that he could come to the office and discuss it with me, and he appeared at the office approximately 20 minutes later, and we discussed the information regarding this investigation that was involving something else.

Q. Yes? Go ahead.

A. It was in regard to another matter. During the course of our conversation, and after a search of his personal effects at the barracks, an item was recovered --

MR. GODWIN: Object.

THE COURT: Overruled.

A. An item was recovered from his personal effects which was a key. At the time the key was recovered, the defendant explained that the key belonged to a locker in a bus terminal in Washington, D. C. At this point --

MR. GODWIN: Object and move to strike.

THE COURT: Overruled, motion denied.

A. And he later explained that the locker key belonged to a locker in the bus terminal in Jacksonville, N. C.

Q. (By Mr. Britt) Here in Jacksonville?

A. Yes. We verified this by the make of the key and the key number to be a fact. He later related to me that in this locker --

MR. GODWIN: Object, for the purpose of the record, we object to this to any further conversation testimony as between the defendant and the officer.

THE COURT: Overruled.

Q. (By Mr. Britt) Were these statements that you relate to us just spontaneous statements made by him or were they in answer to questions that you asked him?

MR. GODWIN: Object to leading.

THE COURT: Overruled.

A. I questioned the defendant regarding the possession of marajuana.

Q. You asked him about it?

A. Yes, I asked him certain questions about it as a result of the search that we conducted on the base.

Q. As a result of a search that you conducted on the base?

A. Yes.

Q. State whether or not you made any statement to the defendant concerning any rights he may have or warned him about his rights.

A. I advised him that he was to be questioned concerning the possession of marajuana, that he did not have to make any statement, and that any statement he would make could be used in evidence against him at a trial.

MR. GODWIN: May it please the Court, at this time I would like to interrupt and ask the Court something, if the Solicitor will join me at the bench.

THE COURT: All right.

WHEREUPON, Counsel and the Court held a conference off the record.

MR. GODWIN: At this time, Your Honor, we feel that in connection with the testimony of Mr. Creaturo and Mr. Miracle who will probably succeed him on the stand as a witness, calls on us to make a motion to sequester Mr. Miracle at this time.

THE COURT: Denied.

MR. GODWIN: Exception.

Q. (By Mr. Britt) You say you advised the defendant as you just stated you did?

A. Yes.

Q. After your doing that, what if anything did the defendant say in connection with any marajuana?

A. The defendant exhibited to me in my opinion a cooperative attitude concerning his willingness to cooperate with us, and he stated that, he related that there was a quantity, possibly a quantity of marajuana in this particular locker in Jacksonville at the bus station.

Q. In Jacksonville?

A. Yes.

Q. Did you have the key to the locker then?

A. I had the key to the locker.

Q. Was there anything said by the defendant to you authorizing you to open that locker at the bus station?

A. I advised him of his constitutional rights under the 4th Amendment concerning his answers and he exhibited a voluntary waiver to that effect, that he would authorize us to have access to that locker.

Q. Do you have that release that he signed?

A. I do.

Q. Will you read the release to the Court and jury?

A. It is dated the 21 of April, 1966, written in Mr. Anderson's hand.

Q. All of the writing is filled out in his handwriting?

A. Yes, the blanks are filled out in his handwriting.

Q. In the defendant's handwriting?

A. Yes. "I, Franklin D. Anderson, have been informed of my constitutional rights not to have a search made of my personal effects hereinafter mentioned without search warrant, and my right to refuse to consent to such a search, hereby authotize Mr. J. J. Creaturo, agent for the Naval Intelligence Department of the United States Navy to conduct a complete search of my personal effects located in Locker No. 242 located at the Trailways Bus Terminal in Jacksonville, N. C. The agents are authorized by me to take from this locker any letters, papers or materials or other property that they may desire. This written permission is given by me to the above special agent without any force of any kind or threats of any kind, signed Franklin W. Anderson."

Q. That is a form that you use at the base when a person wishes to waive any search warrant or anything like that?

A. Yes.

Q. Now Mr. Creaturo, what if anything did the defendant tell you concerning any marajuana in this locker at the bus station in Jacksonville?

A. He related to me that he had obtained the marajuana from Washington, D. C. and brought it to Jacksonville, N. C. to sell it and use it, and that he had an accomplice.

Q. That he had what?

A. He had an accomplice who helped get rid of this marajuana by selling it and the individual he could not identify or give a discription, and we were unable to identify this individual.

Q You were unable to identify the accomplice that he stated to you?

A. Yes.

Q. What else if anything didhe say?

A. Well, after we had the authorization to search his locker, I contacted Mr. Miracle.

Q. The officer in the Jacksonville police department?

A. Yes, since the locker was in his jurisdiction and off of the :Federal property. I still wanted him to be able in case we had any complex here even though the man authorized us to have access to those possessions in the locker.

Q. Go ahead and tell what you did then?

A , We brought the Defendant to Jacksonville and met at the Jacksonville police department.

Q. The defendant was with you?

A. Yes, the defendant and another agent from the office of Naval Intelligence and myself, and Detective Miracle and several other Jacksonville police department members. At that time the defendant once again described his accomplice, and we tried to locate him in town. In the meantime, we had placed a surveillance, placed the locker in the Trailways Bus Station under surveillance in the event the other individual came to remove something from the locker. This did not prove fruitful after a couple of hours, the defendant and myself and Mr. Miracle went to the locker where the defendant

#8-Mr Creaturo

opened the locker and turned over to me the package of brown paper bag which contained two small packages of vegetable material. It was later determined to be marajuana by labratory test.

MR. GODWIN: Object.

MR. BRITT: I undetstood him to say that he would stipulate that this was marajuana. We have to remember we don't have the man here.

MR. GODWIN: At this time, Your Honor, the defendant stipulates that the substance found in locker 242 in Jacksonville bud station on January 21, 1966, was analyzed to be marajuana. Now we will not stipuilate to any custody or anything else.

Q. (By Mr. Britt) You say that this substance that you took from this locker in the presence of the defendant, it has been stipulated that that was marajuana and the report of the investigation indicated that it was?

A. The substance was removed by the defendant and handed to me.

Q. And you turned it over to Mr. Miracle or to the State Bureau of Investigation?

A. It was sent to the State Bureau of Investigation labratory by registered mail for analysis.

MR. GODWIN: Object.

THE COURT: Overruled.

MR. BRITT: We withdraw that, he stipulated. Now how much, of this substance, did you find, do we have it here now?

A. I believe it is in the court room at the present time.

Q. Is this the material that you found?

A. To the best of my knowledge that is the same material.

Q. And you say the defendant handed this to you at the locker?

A. The defendant handed me a bag in which this was contained.

Q. And I believe you testified that the defendant stated to you while you were on the base that he did have some marajuana in his locker, is that correct?

A. He stated it on two different occasions, once on the base and once at the Jacksonville police department that he had placed a quantity, approximately 40 packets of that size in that locker.

Q. And where did he say he obtained this and what was he doing with it?

A. He stated that he had obtained it in Washington, D. C., area and had taken it to Jacksonville, N. C., to use it and sell it.

Q. Use it and sell it?

A. Yes.

Q. Did he state to you that he always used marajuana occasionally?

MR. GODWIN: Object.

THE COURT: Overruled, don't lead him, Mr. Solicitor.

Q. (By Mr. Britt) All right. What if anything did the defendant say to you, if he said anything to you, concerning the use of marajuana?

A. The defendant related a history of having used marajuana for a couple of years.

MR. GODWIN: Couple of years?

A. Yes.

Q. (By Mr. Britt) How many packages did youfind in the locker at the bus station or did the defendant hand to you from the locker that he stated was his locker at the bus station?

A. Two.

Q. Did he make any statement to you as to how long he had had this locker at the bus station?

A. To the best of my memory I believe he said a couple of days or two or three days.

Q. You say at the time the locker was opened that the defendant opened it?

A. Yes.

Q. And you and Mr. Miracle and some other onvestigators from the base were present?

A. In the immediate area of the locker myself and Mr. Miracle were present. On the area surrounding where the bus station was, was several other agents present.

Q. State whether or not, Mr. Creaturo, there was any money in this locker?

A. There was $293.00 in bills in the locker.

Q. $293.00 in cash money?

A. Yes.

Q. What was the various denominations?

A. One dollar and five dollars mostly.

Q. Was there anything else in the locker other than the package which has been identified ascontaining marajuana and the money?

A. The locker was empty except for the things that were removed by the defendant.

Q. Do you know what other items the locker contained other than the money and the marajuana?

A. Nothing to the best of my knowledge.

Q. All right.

CROSS EXAMINATION

Q. (By Mr. Godwin) When was this trip made to the bus station with Anderson?

A. On the 21 of April.

Q. He had been under surveillance by you for robbery out there on the base prior to that?

A. No Sir, he had not.

Q. What was he under surveillance for?

A. He had been questioned in connection with a robbery at the base.

Q. You say now that he was not under surveillance but was under suspicion involving an robbery?

A. Yes.

Q. And you came to him and asked him to let you search him to find out what you could about the robbery, did you?

A. No, he came to me on the morning of the 21st and voluntarily stated that he wished to discuss the matter concerning the robbery.

Q. And he said, he signed a waiver and allowed you to go into everything he had?

A. No, the locker.

Q.. Wall locker and everything else?

A. No Sir.

Q. He had no eeservations about that whatsoever?

A. If he had reservations he did not express them.

Q. He did not have any reservations about that key, did he? The one that youfound when you searched him for the robbery?

A. I can't answer that.

Q. Well, it was right there with everything elsewas it ?

A. He turned the key over to me as a special agent.

Q. Did he ever tell you any kind of story different from the one you related here about what he was doing with the key? Did he tell you about a man by the name of "Cowboy" in Jacksonville?

A. That is the name of the individual that I rwferred to earlier in my testimony.

Q. Did he tell you that Cowboy was the owner of that locker?

A. He said that he was in partnership of some kind with this individual.

Q. Mr. Creaturo, did he tell you that Cowboy was the owner of the contents of that locker?

A. No, he told me he placed those 40 packets, or approximately 40 in that locker.

Q. He did not tell you how he came in possession of the key?

A. I don't recall.

Q. Do you recall him saying that Cowboy gave him that key?

A. I can't recall at this time.

Q. Prior to the locker being opened, did he describe what youwould find in it?

A. He stated that at the time he did not think there would be any marajuana left in there, but that there mighht be some. He at first stated that he placed 40 bags in there but under the agreement that he allegedly had with his accomplise he wbuld place a marajuana in there in the locker and would take and sell what he could and the other individual would take and sell what he could.

Q. Did he tell youwhether he had sold any of the marajuana after he placed it in there?

A. I don't remember.

Q. Do you recall him saying he had not returned to that locker and had not been to it or been in Jacksonvilee in two days prior to his arrest or the time you talkedto him?

A. I don't recall.

Q. Did youdiscuss anything before the locker was opened about what would be found in there besides marajuana?

A. Yes, we discussed the possibility of money being in the locker.

Q. Did he tell you he had placed the money in there?

A. No, as a matter of fact he denied placing any money in the locker.

Q. Did he register surprise at the time he opened the locker to find money in it?

A. Yes, he did.

Q. You had the key to that locker at the time he opened it?

A. He had the key and opened the locker.

Q. Well, you had him and he had the key?

A. Yes, he was with us.

Q. So the key was for all intents and purposes in your possession, was it? You handed him the key back so he could open the locker?

A. Yes, that is true.

Q. So you had the key and he did not say anything to you about money being in the locker prior to it being open?

A. Yes, he said if you find any money in there it was put in there by somebody else.

Q. Now I will ask you this, are there more than one or is there more than one key to a locker like this at the bus station?

A. To the best of my knowledge, no.

Q. So this boy could not possibly have had a key to that locker if you and Anderson had the only key?

A. That was my assumption.

Q. Now lets go back, what did he tell you about money being in there, if anything, prior to it being opened?

A. He stated that if there was any money it would be from the sale of marajuana that had been placed in the locker.

Q. Did he tell you that he had sold any marajuana since he had placed it in the locker?

A. No, to the best of my knowledge.

Q. In other words he said if you find any money in there, it is money from the sale but he did not do it?

A. Basically that is what I took it to mean, yes.

Q. What you took from him?

A. Yes.

Q. When you brought him to town on the 21 of April, was he under arrest by military or civil authority, to your knowledge?

A. No.

Q. You have the power to arrest on the base, do you not?

A. Only in the sense that we have power of arrest only when observing a crime in the act of being committeed.

Q. You, yourself, Mr. Creaturo, as an officer of the Naval Intelligence, had the power to arrest military personnel for governmental violations?

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A. Yes, if in the act.

Q. You had not arrested this man?

A. No.

Q. He was still under suspicion?

A. Yes.

Q. Do you know when he was arrested on this charge of marajuana?

A. He was placed in confinement on the same day I believe charged with the military offense of pessession of marajuana on the base.

Q. Did he in fact have marajuana on the base at Camp LeJeunne to your knowledge?

A. To my knowledge he did.

Q. Where was that?

A. In his personal effedts.

Q. Did you find, when you searched him any robbery material?

A. Yes.

Q. Was he ever brought to trial on that charge?

A. No.

Q. That was back on April 21?

A. Yes.

Q. He still has not been tried?

A. He was given a hearing under article 32 investigation hearing.

Q. Has he been court martialed?

A. To the best of my knowledge no.

Q. That is your court out there?

MR. BRITT: We object to that, Your Honor, as being immaterial to this case.

Q. (By Mr. Godwin) Where has Anderson been since the 21st day of April, 1966?

A. I do not know.

Q. Do you not know that he has been in commitment in the base brig for all of that time?

A. Yes, for part of the time.

Q. And the other time he has been in custody in the county jail?

A. No Sir, I don't believe so.

Q. Do you know when the military turned him loose over to civilian authorities?

A. Approximately two weeks ago, I believe.

Q. Going back to the 21 day of April, you came to town with Anderson and he went to the police station?

A. Yes, that is correct.

Q. That is when he had the key with him?

A. No, we already established that he had the key.

Q. And you talked to Mr. Charles Miracle, detective of the Jacksonville police department?

A. That is right.

Q. Describe if you will your entry into the police station, what took place?

A. As far as I can remember, we drove up in one of the government automobiles, took Anderson in, discussed the matter at hand regarding possible identification of the other suspect whom he had give us a description of.

Q. You were discussing with Anderson?

A. We discussed it in the presence of Anderson, and then he related that description again to the police officers in the police station, and we discussed what might possibly be in that locker.

Q. Who discussed that? Anderson?

A. Anderson was questioned or was asked a few questions by Mr. Miracle,, I believe, and Patrolman McQueen, was present. I believe detective Bradley might have been there, I can't be sure.

Q. Had Miracle ever seen Anderson before to yourknowledge?

A. Not to my knowledge.

Q. Did you give Miracle any explanation of what Anderson was being brought in for?

A. Yes, I had previously talked to him on the telephone.

Q. Did you give him an idea of what Anderson said about the marajuana being down there in town?

A. I told him that it was a good possibility that there was marajuana in that locker.

Q. And did you give Mr. Miracle some brief as to what to expect of Anderson when you brought him in?

A. We discussed the possibility of identifying the other individual.

Q. My point is that you did not bring Anderson to the police station and turn him right over to Mr. Miracle and say "Here is Franllin Anderson to do what you will with him?"

A. No,

Q. Mr. Miracle knew what you were bringing him in for?

A. I indicated to Mr. Miracle that the defendant had given us the information that he wanted to cooperate and try to locate this other individual.

Q. Had you given Mr. Miracle the lock box number before the time you got to the police station?

A. I don't recall whether I did or not.

Q. I believe you stated that the lock box was under surveillance by you or someone under your direction about two hours prior to having Anderson go up and open it?

A. Yes, I would say it was approximately two hours.

Q. Were you in the presence of Mr. Anderson all of that time?

A. Some of that time.

Q. As much as an hour?

A. Possibly, yes.

Q. You were discussing this situation all throughout your stay together?

A. Well, the majority of the time. Mr. Miracle was with myself and the defendat.

Q. During the two hours that you had the locker under surveillance?

A. Well, during the approximate hour we were together.

Q. And all three of you were talking together to each other?

A. Well, there were other people in the automobile but I don't recall all of the conversation.

Q. Did Anderson tell you where he first came in contact with the marajuana?

A. I don't recall exactly whether he said it was in New York area or Washington, D. C. area, but I feel it was in New York.

Q. Did he tell you how frequently he had used it over that period of time?

A. Yes, he did but I don't remember exactly, I think it was once or twice a week. I could not say exactly how many times he told me he had used it.

Q. When did you package up this material or mail it to the State Bureau of Investigation?

A. I believe it was the day or two after it was recovered from the locker.

Q. Was it in your possession all of that time?

a. Yes, it was.

Q. You, yourself, packaged it and sent it off by registered mail?

A. Yes.

Q. To the state bureau in Raleigh?

A. Yes.

Q. You receivdd the report on that from Raleigh?

A. Yes, I did.

Q. And turned it over to the city police?

A. I gave them a copy, I have the original.

Q. This is the package that you just identified?

A. Yes

Q. I hand you this and show you writing on this, and ask if you recognize this?

A. Yes.s these are my initials on the package.

Q. "J. J. C."

A. Yes.

Q. That is your name and the approximate date of inception?

A. Yes.

Q. And you did mark this before you sent it to Raleigh?

A. Yes, that is correct.

Q. Have you had occasion since the 21st day of April to discuss this case with anyone else?

A. Discuss the case?

Q. Have you talked to Mr. Miracle about it?

A. Yes.

. On more than one occasion?

A. Yes.

Q How many times have you discussed it?

A. It is hard to say, two or three times.

Q. Have you discussed your testimony with him here today, with Mr. Miracle?

A. No.

Q. Prior to coming to Court?

A. No, I have not.

Q. No further questions.

REDIRECT EXAMINATION

Q. (By Mr. Britt) State whether or not the defendant showed you or pointed out any places here that he attended, what may be called marajuana parties?

A. The only indication of local that the defendant named as having been a place where he made contact with his other individuals was Blue Haven Bar.

Q. Blue Haven Bar?

A. Yes.

Q. Did he say that he had consumed marajuana there or that it had been passed there/

A. He did not say that Sir, he said that he had made contact with his accomplice or associate there.

Q. You never did find the fellow by the name of Cowboy?

A. No Sir.

Q. Did he say that this fellow had a key to the locker?

A. Yes, he did say so.

Q. And this material was found in this same type package in the locker, was it?

A. Yes.

Q. All right, come down.

RECROSS EXAMINATION

Q. (By Mr. Godwin) You say that he never did identify Cowboy?

A. No, we have not.

Q. I will ask you this, if the name Cowboy was new to Mr. Miracle at the time you gave, or Anderson gave you that name, had he already heard the name Cowboy before?

A. I could not answer that. He did not mention it.

Q. He did not indicate it to you?

A. He did not indicate to me that he had ever heard it.

Q. To your personal knowledge has Cowboy ever been found or arrested?

A. No.

Q. Did Anderson turn any other names involving marajuana in?

A. He related the names of individuals who were in military still in the area, some of them.

#24-Mr Creaturo-reacross

Q. And you contacted those people?

A. Tes, they have been contacted.

Q. All right.

(Witness excused)

* *

MR. BRITT: Your Honor, we tender Mr. Miracle for the purpose of corroboration if the jury should find that it does, and if Mr. Godwin cares to put him on the stand. His evidence would be purely cumulative.

THE COURT: He can do that after lunch. Members of the jury, during the lunch recess do not make up your minds as to this case, you may not have heard all of the evidence or addresses of counsel or charge of the Court. Do not discuss it among yourselves or with anyone else and do not allow anyone to discuss it with you or in your presence, we will take a reaess until 2 o*clock.

MR. BRITT: I am going to excuse Mr. Creaturo.

MR. GODWIN: No objection.

WHEREUPON, the Court was recessed until 2 o*clock.

* *

MR. BRITT: Your Honor, of course we introduce in evidence the packages that have been admitted to contain marajuana which is a narcotic drug, and with that the State rests.

THE COURT: Does the Defendant desire to cross examine Mr. Miracle?

MR. GODWIN: Yes.

#25-Mr. Miracle

CHARLES MIRACLE

A witness for the State, upon being first duly sworn, was cross examined by defense counsel.

Q. (By Mr. Godwin) You are Mr. Charles Miracle?

a. Yes.

Q. Detective for the Jacksonville Police Department.

A Yes.

Q. You are the arresting officer in thie case?

A. Yes.

Q. You are the man who arrested Franklin Anderson?

A. No, I did not arrest him, on September 19 I had him arrested at the base. I signed the warrant against him.

Q. Was he arrested on September 19 or 16.

A. September 19, is what I have, that he was released from the base.

Q. That is when he was committed to you and in custody and put in jail?

A. Yes.

Q. Where has he been since September 19?

A. I don't know Sir, I heard this morning that he had been in jail.

Q. He remained in jail?

A. Yes, that is my understanding. He was brought to Jacksonville on the 21st.

Q. And was he got for the examination of the bus station locker down there?

A. Yes.

Q. You had him in your custody at that time, did you not?

A. No Sir.

Q. Did you go with him to the bus station?

A. Yes Sir.

Q. And you foundmarajuana in there on the 21 day of April?

A. Yes.

Q. And he was arrested on this charge on the 16th day of Sebtember, or the 19th day of September?

A. The 19th day of September.

Q. Three months later?

A. Yes.

MR. BRITT: Go ahead and explain.

A. On the 21st of Aprib, I told him that he would upon release from the base be arrested in town for narcotics.

Q. Was he taken to trial on the base?

A. I don't know.

Q. Was he in the brig on the base?

A. I don't know whether he was on the base or not, being detained for anything, I got a warrant and had him arrested.

Q. That was the 19th of September?

A Yes.

Q. So he pretty well stayed in custody from the 21st of April until September 19 whan he was arrested?

A. I believe he was under custody of the base.

Q. And he volunteered the statement to you that you heard Mr. Creaturo relate this morning?

A Yes, he did.

Q. Mr. Miracle, did you have the marajuana in your podsession all of the time from the 21st of April until today?

A. On the 21st of April after we went back to the police department, I signed or put my initials on the marajuana and I believe I put the date and time, or one of us put the date and time, and I initialed both packages and then it was, well, in their possession until September 19 when it was released in the base.

Q. Did Franklin Anderson mention a name to y ou of Cowboy back there? In April?

A. Yes. We went and looked for Cowboy.

Q. Had you ever heard the name before?

A. No, not from him.

Q. Have you heard it from any other sources?

A. Yes, over a period of years I have. It is a name used for a person that deals in narcotics or uses it.

Q He was not talking about any particular person?

A. In my opinion, no Sir. They call them candyman.

Q. He was in partnership with anyone who was selling marajuana, is that what he was saying?

A. Yes, in my opinion that is just a name he was using.

Q. He did not mean one particular person as far as you are concerned, he told you he was in partnership with Cowboy?

A. Yes. He talked of one particular boy, he called him Cowboy and gave us a slight description of him.

Q. But you never could do anything about it?

A. We went looking for this subject down in the colored section of town and he showed us two or three places that he had been and met him.

Q. Did you ask Anderson what to expect when you openedd the locker?

A. He told us what would be in there in his opinion.

Q. Marajuana?

A. **Yes.**

Q. Did he tell you before the locker was opened that there was any money in there?

A. He said there could be some money in there for some of the 40 packages that he had in there.

Q. Was there any inquiry made as to how much money would be in there?

A. No.

Q. But when you opened it you found $293.00?

A. Yes Sir. My report shows $294.00.

Q. That is just one dollar over what Mr. Creaturo said?

A. Yes.

Q. Now, how many keys are there to a bud station locker like the one in Jacksonville?

A. I have no idea. In my opinion, from what I talked to Mr. Cox, who is the manager, he said that there was one key, that the original stayed in the locker and he had a key.

Q. He had a master key to open them and clean them out?

A. Yes.

Q. But the man who went there and put a quarter in the slot is the only key to that locker?

A. Yes. This night in order to get a key back I put a quarter in the locker and got the key back out.

Q. So he did not say anything about money but you did find money?

A. Yes, he said something about money. He said that there was a quantity of narcotics in there, marajuana in there, 40 some packages and that if there was any money in the locket it was for the sale of marajuana, that was missing.

Q. Did he say he had sold any?

A. He said that he had not been to the locker since he had put it in there.

Q. Since he put it in there?

A. Yes.

Q. All right.

MR. BRITT: Come down.

(Witness excused)

* *

MR. GODWIN: We make a motion.

THE COURT: What kind of motion?

MR. GODWIN: For verdict of nonsuit.

THE COURT: Denied, exception.

* *

FRANKLIN B. ANDERSON

The Defendant, upon being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Godwin) Your name is Franklin Douglas Anderson?

A. Yes.

Q. You are 20 years of age?

A. Yes.

Q. And were a member of the United States Marine Corps stationed at Camp LeJeunne?

A. Yes.

Q. Did you have occasion on the 21st of April of this year to talk to Mr. Creaturo, the officer of the Naval Intelligence?

A. Yes.

Q. Under what circumstances did you talk to him?

A. He was investigating a robbery of the PXO on the base.

Q. Were you suspected of that robbery?

A. Yes, because I was working on the base, in the PX at that time.

Q. Did he search your private effects, your wall locker?

A. Yes.

Q. Did he do that withyour consent?

A. Yes.

Q. Where did y ou give the consent?

A. I was threatened with a Federal warrant and they told me they can get in the locker one way or another.

Q. So you let them go in the locker?

A. Yes.

Q. Did they find anything in connection with the robbery?

A. No, they did not.

Q. They found a key to a locker in the bus station at Jacksonville?

A. Yes.

Q. Did they talk with you about that?

A. Well, they asked me just what I was doing with it or where it belonged.

Q. What did you tell them?

A. I told them that it belonged to the bus station at Jacksonville

Q. Did you tell them that it belonged to a bus station in

Washington, D. C.?

A. No, I did not.

Q. Just Jadksonville?

A. Yes.

Q. What else did you tell them about that?

A. Well, that was all that I mentioned about that, I told them that the key was given to me by a fellow named Cowboy.

Q. Were you speaking about a particular person?

A. Yes, I was.

Q. Who is Cowboy?

A. Well, I met him down in Jacksonville at the Blue Haven.

Q. Where is the Blue Haven?

A. I don't know what street,

Q. It is down across the railroad?

A. Yes.

Q. How well did you know Cowboy?

A. Well, I had met him a couple of months before that.

Q. Where did he give you that key?

A. He told me to hold it for him.

Q. Did you know what the key was to?

A. No, I did not.

Q. Did he tell you anything about it?

A. No, he did not.

Q. What about all of these statements of marajuana that the policemen are talking about, where did they get that idea?

A. Well, there was marajuana found in my coat pocket.

Q. Down at the base?

A. Yes.

Q. And they questioned you about that?

A. Yes.

Q. Do you remember coming to town with them on the 21 of April?

A. Yes.

Q. With whom did you come to Jacksonville?

A I came to Jacksonville with Mr. Creaturo and Mr. Stephenson of the army.

Q. Where did you go when you got to Jacksonville?

A. First we went to the police department.

Q. Did you see Mr. Miracle there?

A. Yes.

Q. Did you have any conversation with him at that time?

A. Not that I remember.

Q. What time did you come to Jacksonville that day?

A. It was about 10:30 that evening.

Q. And you met Mr. Miracle pretty soon after going to the police station?

A Yes.

Q. How long were you in with Mr. Miracle on that occasion?

A. We only stayed a few minutes and then we left for the bus station.

Q. How long were you with him at that time?

A. At the bus station? We were in the same car together.

Q. How long were you together with him?

A. Just a few minutes.

Q. What did you do at the bus station?

A. Well, I was handed the key to open the locker and as I opened the locker Mr. Creaturo and Mr. Miracle were standing by me, and as I opened it I was reaching inside and Mr. Creaturo reached in and took the bag out Mr. Creaturo grabbed the bag from my hand and put in this cash.

Q. Did you see anything besides the bag in the locker?

A. No.

Q. Did you see any money in there?

A. No.

Q. Did you say anything to the police officer about money being in the locker?

A. Not that I recall.

Q. When did you rent this locker?

A. I did not rent the locker.

Q. You did not?

A. No.

Q. How long were you, you were picked up at night on the 21st of April, how long had it been since you had been to Jacksonville at that tome? Had you been to Jacksonvilke earlier that day?

A. No.

Q. Had you been to town the day before?

A. No.

Q. How about the day before that?

A. No Sir. The last time I was in Jacksonville before that was Friday when I stopped at the bus station on my way to New York City.

Q. On Friday?

A. Yes.

Q. Did you come back in to Jacksonville by bus?

A. Yes, I did.

Q. Did you get out at the Jacksonville bud station?

A. No, the bus brought me back to the base at Camp LeJeunne.

Q. Camp LeJeunne?

A. Yes.

Q. Took you right to Camp LeJeunne.

A. Yes.

Q. Did you bring any marajuana back from New York with you?

A. No.

Q. Did you bring any back from any place?

A. No.

Q. Did you put that marajuana in the wall locker?

A. No.

Q. Did you put any money in the locker?

A. No.

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Q.

Q. Did you know how much money was in the locker before you opened it?

A. No, I did not.

Q. Then you are denying that the marajuana that was placed in this locker was your marajuana or was placed there by you?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Have you ever been arrested for anything before?

A. No Sir.

Q. Have you ever had any ;trouble with the military?

A. Just this investigation that was taking place on account of the robbery of the PX.

Q. Were you placed in the brig at Camp LeJeunne on the 21 of April, 1966?

A. Yes.

Q. How long did you stay in the brig?

A. Until the 27 of July.

Q. What happened on the 27 of July?

A. The 19th of September when I come in they placed me on restriction, I was on restriction until about the 14 or 15 of September, when my orders were terminated for the service company, H & S Commany.

Q. You were transferred from one company to another?

A. Yes.

Q. When were you arrested?

A. I was arrested on the 19 of September.

q. What kind of restriction were you under during July and August?

A. It was restriction to the base.

Q. You were restricted to the base or Onslow County or where?

A. On the base.

Q. Could you move around anywhere on the base?

A Yes.

Q. You could not leave the base?

A. No.

Q. Where are you from?

A. New York City.

Q. How long have you been inthe Marine Corps?

A. Over two years.

CROSS EXAMINATION

Q. (By Mr. Britt) You say a fellow by the name of Cowboy rented the locker?

A. As far as I know he did.

Q. How come you with the key to the locker that you know so little about?

A. He asked me to hold it for him.

Q. When did he ask you to hold it for him?

A. It was about a week before that.

Q. When was that?

a. It was during April.

Q. You had not had the key but that week, about a week?

A. Yes Sir.

Q. How comehe wanted you to hold the key for him?

A. Well, he was asking me to hold it, I did not ask why.

Q. What did he say to you about it?

A. He just said hold this for me, and that is all I asked him.

Q. Did he tell you what it was?

A. No.

Q. Did not even tell you what the key was to?

A. He told me it was the bus station locker.

Q. Did you ask him what he was doing with a locker at the bus station?

A. No.

Q. You did **not** even ask him that?

A. No.

Q. How come he wanted you to hold the key?

A. I don't know.

Q. How long have you known this fellow?

A. A couple of months.

Q. You had been with him a lot, I suppose?

a. Well, I had been with him about twice a week.

Q. Where had you gone with him?

A. We went down to the Blue Haven.

Q. What did you do down there?

A. We danced.

Q. I believe that is padlocked right now?

A. I don't know, I have not been there many times.

Q. You danced down at the Blue Haven?

A. Yes.

Q. What else did you do?

A. That is about it.

Q. How were you traveling?

A. Well, I was in his car.

Q. Where was he from?

A. I don't know where he was from originally.

Q. Where was he from any other time except on April 21?

A. Just from Jacksonville.

Q. You don't know how long he had been in Jacksonville?

A. No.

Q. What age man was he?

A. He was about 25 .

Q. Did he tell you what he was doing down here?

A. No, he did not. As far as I know he was a resident down here.

Q. But you don't know what he was doing or where he was living?

A. No.

Q. He never did take you to his home?

A. No,

Q. And he was not a Marine, was he?

A. No, he was not.

Q. How did he happen to get tied up with you?

A. I met him down at the Blue Haven.

Q. I suppose you met a lot of other people down there too?

A. Yes.

Q. He picked you out and had confidence enough in you to leave his locker key at the bus station with you?

A. Well, yes Sir.

Q. Do you know why he did not want to keep the locker key?

A. No, I don't.

Q. Did you ask him?

A. No Sir.

Q. Did you ask what he needed the locker for?

A. No, I did not.

Q. You did not ask him a thing about it?

A. No.

MR. GODWIN: May I approach the bench?

WHEREUPON, counsel and the Court held a conference off the record.

Q. (By Mr. Britt) What else did he tell you his name was than Cowboy?

A. That is all I know him by.

Q. Do you think that is sort of unusual for a fellow to be going around with, just Cowboy?

A. No Sir.

Q. Had you run into anyother fellows named cowboy?

A. No, not by the name of Cowboy but similar names.

Q. What kind of car did he own?

A. It was a Mustang, I believe.

Q. You think it was a Mustang, you are not sure?

A. I am sure it waa a Mustang.

Q. Do you know what model car it was?

A. O am not sure if it was 64 or 65.

Q. Do you know how many miles it had on it?

A. No, I don't.

Q. Do you know what license tag it had on it?

A. It had a N. C. tag.

Q. Did you ever use any marajuana with him?

A. No, I did not, Sir.

Q. Did you know that he had any marajuana?

A. No, I did not.

Q. What color was his car?

A. Red.

Q. So you rode around for two months, two or three times a week, with a man you met down at the Blue Haven club and rode around with him and go to dances with him and the only thing you know about him was that his name was Cowboy?

A. Yes Sir.

Q. You did not know where he lived?

A. No.

Q. Did not know what he did?

a. No, I did not.

Q. You did not know whether or not he had a family?

A. No.

Q. Youdid not know that?

A. No.

Q. What did you and he talk about during the time you were with him?

A. Just social, about the girls down at the Blue Haven.

Q. You did not talk about any of his personal things?

A. No.

Q. Did you tell him that you were a member of the Marine Corps?

A. He already knew that.

Q. How did he know that?

A. I guess most of the fellows that came down there with me were from the Marine Corps.

Q. How did he know they were?

A. I guess he met them before, I don't know.

Q. Did you tell him where you were from?

A. No, not at that time.

Q. Did you ever tell him?

A. Yes.

Q. Did he tell youwhere he was from when you told him where you were from?

A. No.

Q. Did you tell him what kind of family you had, whether you had a wife or children or were married?

A. No Sir.

Q. Did he tell you whether or not he was married or had a wife or children?

A. No, he did not.

Q. What else did you talk about other than the girls?

A. That was it, Sir. Everything was about social life and entertainment.

Q. You did not want to inquire into each other's private lives?

A. No.

Q. Did you ask him how he got the name Cowboy.

A. No, I did not, Sir.

Q. Who told you his name was Cowboy?

A. He did.

Q. How did he tell you that?

A. Well, I was with some fellows from the base and one of the fellows knew him and he came over, he said "This is a new fellow", and everybody said yes, and he said "Well, my name is Cowboy".

Q. You told him your name was Frank Anderson, I reckon?

A. Yes.

Q. Well, you did talk to Mr. Creaturo?

A. Yes.

Q. And I will ask if you did not tell Mr. Creaturo, you heard him testify this morning?

A. Yes.

Q. I will ask if you did not tell him that that key was to a locker that you had at the bus station?

A. I don't understand.

Q. You don't understand what I am just asking you?

A. No.

Q / I ask if you did not tell Mr. Creaturo that the key that he found there making the search ofyour belongings was not a key to a locker that you had at the bus station?

A. I told him that it was the key to a locker at the bus station in Jacksonville.

Q. I will ask if you did not tell him that you had some marajuana in that locker?

A. No, I did not Sir.

Q. I am asking if you did not tell/him you had as many as 40 packs?

A. No, I did not Sir.

Q. I will ask if youdid not tell him you brought the marajuana from New York?

A. No, I did not Sir.

Q. I am asking if you did not tell him that you had a man by the name of Cowboy that was an accomplice or was helping you in this and that he had probably sold some of the marajuana?

A. I told him that I had a friend named Cowboy that had given me the key to hold for him.

Q. And I will ask you if you did not tell him that there was some money down in the locker?

A. No, I did not.

Q. You did not tell him that?

A. No.

Q. And you told Mr. Miracle also at the police station after he was brought into the matter, you told him, did you, that there was some marajuana in the locker?

A. Any conclusion that Mr. Miracle came to was one of his own, I did not tell him.

Q. Had you ever seen the locker?

A. Well, I had not actually went up to it and observed, it, no.

Q. You had never been in it?

A. No Sir.

Q. Until that morning? Whatever time it was?

A. No.

Q. You went into the locker and found these little packages here that have been identified and stipulated contained marajuana, did you find those?

A. Well, if that is what was in the bag. #46-Anderson-cross

Q. Well, they looked like a bag there, you got them out and gave them to Mr. Creaturo?

A. Yes.

Q. And there was two of them, was there?

A. I don't know.

Q. Don't you know how many there was?

A. I don't know, it was in a brown paper bag.

Q. I will ask if you did not get the money out and hand it to Mr. Creaturo?

A. It was all in one bag.

Q. Were you advised at that time there was money in there?

A. Not at that time I was not.

Q. Well, the truth about it is that that money came from the bag out there in the safe that you broke into and robbed, was it?

A I did not rob the safe.

Q. Did you know that the serial number on those bills were in a series, continuous series of numbers that matched the serial numbers of the money that was taken from that safe?

A. That is what I was told.

Q. You were told that?

a. Yes.

Q. And you are not saying that is not true?

A. I am saying that I did not put it there. I did not take it.

Q. Do you reckon Cowboy, how do you reckon he was able to get out there and get in that safe?

A. That I don't know.

Q. Had you ever seen Cowboy in the PX?

A. No Sir.

Q. You worked right around the safe all of the time, did you?

A. Yes, I do.

Q. The safe that contained the money that you were told the serial number of the money you found in the locker, were you?

A. Yes.

Q. How long had it been since you had seen Cowboy before you talked to Mr. Miracle and Mr. Creaturo on the 21st of April?

A. The week before that when I got the key.

Q. You had just had the key a week?

A. Yes.

Q. Have you ever seen him since then?

A. No, I have not.

Q. You mean he has never been out to the base to pay you a visit or see you about anything?

A. No.

Q. So you are telling this Court that all you know about this is that a friend by the name of :Cowboy gave you a key a week before that to what he said was a locker at the bus station and you had it in your belongings?

A . Yes.

Q. And you did not tell Mr. Creaturo about knowing that there was any marajuana in theee?

A. No.

Q. Or that you had brought the marajuana from either New York or Washington?

A. No, I did not.

Q. And that you had used marajuana several times a week some times?

A. No, I have not.

Q. How about the pipe that was found in your poseession containing charred substance?

A. Well, there was tobacco in the pipe.

Q. How about the six small pink capsules?

A. I got them for sickness when I had a tooth pulled and it was under prescription by Dr. Jacobs.

Q. How long have you been down here in Onslow County?

A. Are you speaking of on jail?

Q. No, the Marine Corps?

A. I got back from Porto-Rico on December 13, 1965.

Q. Had you been here before then?

A. Yes.

Q. How long were you here before you went to Porto-Rico?

A. About nine months.

Q. And what month was it that you got acquainted with Cowboy?

A. Well, it was back in February I believe.

Q. Right after you got back from Porto-Rico?

A. Yes.

Q. Well, you did sign the statement authorizing them to search your belongings there, did you?

a. Yes, I did.

Q. Waiving any search warrant?

". Yes.

Q. And you consented to go down to the bus station and opening the locker with the key, did you?

A. Yes.

Q. All right.

MR. GODWIN: Come down.

(Witness excused)

* *

MR. GODWIN: That is the showing for the defense.

THE COURT: Any further evidence for the State?

MR. BRITT: No.

ARGUMENT BY :COUNSEL.

* *

#50-End of Evidence

CHARGE TO THE JURY

Ladies and gentlemen of the jury, this is a criminal action brought by the State of North Carolina and being heard at this term of Duperior Court of Onslow County on a bill of indictment in which the Defendant is charged with unlawful, wilful and felonious possession of a quantity of marajuana, a narcotic drug as defined in General Statute of North Carolina Chapter 96, Section 87, in violation of Chapter 90, Section 88, not being authorized by law to possess narcotics against the form and statute in such case made and provided and against the peace and dignity of the state, signed by Walter T. Britt, Solicitor. To this indictment the Defendat has entered a plea of not guilty, and upon his plea of not guilty a presumption of innocence arises, surrounds and goes with him from the beginning to the end of the trial until and unless the State of North Carolina has satisfied you from the evidence and beyond a reasonable doubt of the guilt of the defendant.

Now reasonable doubt is not an imaginary, fanciful or possible doubt, but a reasonable doubt is a fair doubt based upon reason and common sense growing out of the evidence, the lack of evidence or insufficiency of the evidence. It is such a doubt as would leave your minds after a careful consideration of all of the evidence in such condition that you cannot say that you have an abiding conviction to a moral certainty of the defendant's guilt.

Now the Court instructs you, members of the jury, that it has been made unlawful by the General Statutes of the State of North Carolina, Section 9088, for one to manufacture, possess, have under his control, sell or to prescribe, to administer, to dispense or to compound any narcotic drug with certain exceptions that are not applicable to this case, and the Court further instructs you that marajuan is one of those drugs under the law and under the previous Statute 90-878.

So, if the State of North Carolina has satisfied you from the evidence beyong a reasonable doubt that the defendant had in his possession or under his control any quantity of marajuana, the Court instructs you it would be your duty to return a verdict of guilty. If the State has failed to so satisfy you, it would be your duty to return a verdict of not guilty.

Now it is required that the Court review the evidence as it understood the evidence to/have been testified to by the various witnesses who have taken the stand, but the Court instructs you that it is your duty to remember and recall all of the evidence, and to rely upon your recollection of the evidence when you come to make up your verdict. If the Court recites evidence that you do not recall or if the Court inadvertantly fails to recite evidence that you do recall, you are still to be guided by what your recollection of the evidence is, as you are the sole triers of the facts, and as you find the facts to be, you will apply the law as given you by the Court, and thus be able to reach your verdict.

Mr. J. J. Cureturo stated he is an officer connected with the naval intelligence, being a special agent connected with the Marine Corps at Camp LeJeunne; that he has been a special agent for two and a half years; that he knows the defendant; that on April 21, 1966, he had a conversation with the defendant in the morning; that he had been investigating another matter having to do with breaking in or larceny in the PX on the base, and that the defendant had been suspected of participation, and that he had been discussing it with him, and that the defendant called him on the telephone and stated that he wanted to speak to Mr. Cureturo, and that in about ten or twenty minutes, the defendant came in and said he had information relative to the investigation of breaking in the PX. That they discussed it a while and then the defendant agreed to allow him to investigate or search his belongings, as the defendant has later testified, he was told if he did not, they would get a search warrant, so he agreed to let him go ahead and search his belongings on the base. Among his belongings, as the Court recalls, a key to a locker generally found around a bus station was foundn and also found a marajuana cigarette or portion of one in or around his personal belongings. That he asked the defendant what the key was to and he told him itwas to a locker in Washington, D. C. Upon further investigation the defendant told him it was a key to a locker in Jacksonville. He then advised the defendant that he wanted some information, or was going to question him about marajuana, and that he did not have to answer, after he found the key, he did not have to answer the questions if he did not want to; that what he said would be used against him, and warned him generally of his rights; that the defendant exhibited a general attitude of cooperation; that the defendant told him that there was a quantity of marajuana in his locker in the bus station, and that the defendant thereafter executed a voluntary waiver and authorized him to enter this locker; that they have blanks for this purpose which they use in connection with investigations on the Camp LeJeunne base; that he gave the defendant one of these blanks and he filled in the blank places and signed it as he testified to when he took the stand; that the locker was No. 242 here in the bus station in Jacksonville. He further stated that the defendant told him that he obtained a quantity of marajuana in Washington, D. C., and brought it here to Jacksonville for the purpose of sale; that he had an accomplice in town who would help him get rid of the stuff, that he was called Cowboy. He gave some general description of some person that they were unable to find, and Mr. Cureturo stated that he contacted Mr. Miracle of the Jacksonville police department, brought the defendant into the police station and that the defendant again described this person he named Cowboy, and that they tried to locate him; that they staked out and watched around the locker in the bus station and nothing happened in about two hours, so they went to the locker and gave the defendant the key and the defendant opened it and reached in and delivered a bag in which was two containers of marajuana, and $293.00 in one and five dollar bills, and gave them to him.

The State then introduced in evidence the packages of marajuana, offered Mr. Miracle as a witness, and he was cross examined by the defense. He took the stand on cross examination and stated that he was a police officer with the Jacksonville police department; that the defendant was brought to Jacksonville on the 21 of April; that the defendant volunteered all of the statements that Officer Cureturo testified to; that he had the waiver, and told him in his presence the same as officer Cureturo testified to to the effect that he bought this marajuana in Washington and put it in this locker 242 and that he had an accomplice named Cowboy, and that there was some money, or he found money that was put in there by some other person, he did not put it there.

The state then rested, and the defendant took the stand in his own behalf.

He testified that he was 20 years of age, a member of the United States Marine Corps; that he talked to Mr. Cureturo, a naval intelligence officer, and was questioned by him in regard to this robbery of the PX; that Mr. Cureturo's statement to the effect that he voluntarily allowed him and gave him authority to search because he told him he would anyhow, and he agreed, and he did not desire to put them to that much inconvenience, so he agreed and signed this blank to let them search his effects on the base, and found this key to locker 242 in Jacksonville; that he did not tell Mr. Cureturo that it belonged to a locker in Washington, D. C. He testified that this key was given to him by Cowboy who told him to hold it for him; that the marajuana but was found in his jacket, and he was questioned about it, that he was brought to the police department in Jacksonville where he met Mr. Miracle, they went to the bus station and that he opened the locker and reached in and got a bag on the inside, and Mr. Cureturo took the bag out of his hand; he had not been to the bus station dince some Friday before when he was on a trip to New York, and when he came back and got off at the base, he had not been in the bus station since. He did not put the money, $392.00 found in there nor did he put the marajuana in the locker; he only had the key that he washolding for Cowboy; that On April 21st, and from May, June and July he was on the base; that he had been in service over two years, and he denies that he had the marajuana or that he owned it or that it was in his possession in the locker. He denies that this key was taken by him from the locker he saying that it was given to him by Cowboy. He testified that he denies that he brought it from New York or Washington or any other place, and he denies that he stated there was any money in the locker, but he did not sell the marajuana, and further testified that he was told and understood the money found in the locker contained the same serial number as the portion of money that was taken from the safe in the PX on the base.

Now that is substantially all of the evidence as the Court recalls the evidence to hace been testified to by the various witnesses who have taken the stand, but the Court again instructs you that it is your duty to remember and recall all of the evidence when you come to make up your verdict.

Upon this evidence the State of North Carolina says and contends that y ou should be satisfied of the defendant's guilt beyond a reasonable doubt and therefore return a verdict of guilty, as charged. The State says and contends that it is unreasonable to ask you ladies and gentlemen to believe that this defendant was given a key by somebody that he does not know who it was, does not know where he lives, he does not know his last name, just knows him as Cowboy. The State says and contends that it is unreasonable to ask you ladies and gentlemen to believe that a person would give a key to a locker with marajuana and $293.00 in the locker. The State says and contends that that just did not happen, and that it is unreasonable to ask you ladies and gentlemen to believe it happened. The State says and contends that the defendant has made the statement to the officers, Cureturo and Miracle, voluntarily stating that they could search his effects at the base and also search the locker, and he told them that he had marajuana in there, and he brought it here from Washington, brought it here to sell, and contends an accomplice was using the locker and selling a portion of it, and that he had some 40 packages in there, and the State says and contends that when they searched the locker they found two. The State says and contends that there had been a quantity of it sold by this defendant, or someone, he knew who did sell it or he handled it. The State says and contends that the marajuana in the locker was in possession of this defendant, and was under his control; that there is onlyone key to this locker with the exception of the master key under the managership or by the manager at the bus station for the purpose of opening boxes when it is under his direction for search for one purpose or another, and this defendant had the only key that would fit it and therefore this was either in his possession or under his control, and you should find from the evidence and beyond a reasonable doubt, and therefore return a verdict of guilty.

Now the defendant, on the other hand, says and contends that he is not guilty, that this key was given to him by somebody else, he does not know who he is other than his name was cowboy; he saw him a couple of times at some of these places in town and that he for some reason or other had such confidence in him to give him a key to a locker in which was found the marajuana and $293.00 or $294.00. The defendant says he did not know the money was there, did not know the marajuana was there, he did not know anything was in there; that this man just gave him the key and told him to hold it for him. He says and contends that he did not tell the officer that he knew the marajuana was in there, and that he had purchased it in Washington and brought it here and had it for sale by this accomplice, Cowboy, and says that he knows Cowboy, the person called Cowboy, but did not know that Cowboy had anything to do with marajuan or this money that had the exact serial number of money taken from the PX. All he knows is that the Cowboy just gave him the key to hold and that is all he knew about it. He did not tell the officer that he had marajuana, he did not put the marajuana in there, and the officer is just mistaken, and you should fail to find that he did, or at least from a fair and impartial consideration of all of the facts and circumstances, that there should arise in your minds a reasonable doubt of his guilt, and you should resolve this doubt in his favor and find him not guilty.

The Court instructs you that if the State of North Carolina has satisfied you from the evidence, and beyond a reasonable doubt, that the defendant had in his possession, or has satisfied you from the evidence that beyond a reasonable doubt the defendant had under his control any quantity of marajuana, denominated as a narcotic under the law and the statute, it would be your duty to return a verdict of guilty. If the State has failed to so satisfy you, or if there arises in your minds a reasonable doubt as to his guilt, it would be your duty to resolve the doubt in his favor and return a verdict of not guilty. So you may retire and make up your verdict, and say by your verdict is the defendant guilty, or not guilty. You may retire.

* *

WHEREUPON, the jury retired and after deliberating for some time returned to Court and announced their verdict as guilty.

#60-Verdict

MARION M. GODWIN
WILLIAM M. CAMERON, JR.

703 COURT STREET
TELEPHONE 347-2101

GODWIN AND CAMERON
ATTORNEYS AT LAW
P. O. DRAWER 880
JACKSONVILLE, N. C.

March 10, 1967

Mr. Harold B. Brady
Attorney at Law
946 Fulton Street
Brooklyn 38, New York 11238

Dear Mr. Brady:

Enclosed is a copy of the transcript in the matter of State of North Carolina vs. Franklin B. Anderson.

I regret that we experienced such a delay in obtaining this transcript but I forward it to you at this time with a statement for preparation of the transcript in the amount of $36.00.

Wishing you ever success in your examination of this matter, I am

Very truly yours,

GODWIN AND CAMERON

M. M. Godwin

M. M. Godwin

MMG:cjl

Enc: 1

cc: Mr. Franklin D. Anderson
Rt. 8, P. O. Box 400
Raleigh, North Carolina

cc: Mrs. Louie Anderson
90 Green Avenue
Brooklyn, New York 11238

FORM NO. NCP 310

State of North Carolina
Prison Department
Raleigh

INFORMATION CONCERNING LOSS OF CITIZENSHIP RIGHTS

Having been convicted of a FELONY you have lost your rights of citizenship. This means that, among other things, you cannot vote or hold public office.

However rights of citizenship may be restored by following the procedures outlined in Chapter 13, General Statutes of North Carolina.

These steps cannot be taken until two years after you have been discharged from parole or from prison by expiration of your sentence or sentences.

When you become eligible for such restoration you should consult an Attorney at Law or the Clerk of the Superior Court where you reside or where you were convicted.

Date delivered or read to inmate 11-18-66

Signature of processing officer FO Hunter

F. B. Anderson

Original to Inmate
Yellow copy to Field Jacket
Pink copy to Main Jacket

A.J.6

NORTH CAROLINA PRISON DEPARTMENT

Mr. Harold B. Brady
(Full Name of Addressee)
946 Fulton Street
(Street & Number)
Brooklyn, New York (City) N.Y. (State)

Polk Youth Center
(Unit Name or Camp Number)
Route #8 P.O. Box #400. Raleigh, N.C.
(Post Office Address)
November 25, 1966
(Date)

Mr. Brady,

I am writing you in regards to my present situation, in which I feel that it is necessary to tell you exactly what has happened in order for you to help me. It began on the night of April 21, 1966, when Agents from the office of naval intelligence were searching my locker in regards to a theft from the post exchange. They found nothing pertaining to the theft, but they did find a key which was not in my possession but was laying in my vicinity. I told them that the key did not belong to me. It was later revealed that the key was to a baggage locker at the bus station in Jacksonville, N.C. The locker contained marijuana. Therefore, I was charged with possession of ~~narcotics~~ narcotics. I was not arrested until Sept 19, 1966, which is nearly five months later. Nothing was said to me between April and Sept, until the 19th when I was arrested. My trial was held nearly 6 months after the search of my possession. On October 5, 1966 my trial was held and the judge sentenced me to 3-5 years confinement. I asked the court for an appeal, therefore I was placed under $5,000.00 bond and $200.00 appeal bond. On November 4, 1966 I was sent from Onslow County jail to North Carolina Prison Department in Raleigh. When I asked about my appeal I was told that I did not ask for one. The lawyer that I had was not very helpful. He spoke to me only once before the trial and that was the day that I called for him. He actually knew nothing at all ~~the~~ about the case which was about 20 days after I called him. I'm not positive of all of the dates, but they are just about right.

P.S. - LOSS OF CITIZENSHIP??

CENSOR'S STAMP
CENSORED POLK YOUTH CENTER
BY RLB
AJG

FROM Franklin D Anderson
(Full Name of Inmate)

(Prison Number)

NORTH CAROLINA PRISON DEPARTMENT

Mr. Harold B. Brady Esq.
(Full Name of Addressee)
946 Fulton Street
(Street & Number)
Brooklyn, New York N.Y.
(City) (State)

Polk Youth Center
(Unit Name or Camp Number)
Route #8, P.O. Box 400, Raleigh, N.C.
(Post Office Address)
December 7, 1966
(Date)

Mr. Brady,

In my previous letter I failed to mention that an article 32 investigation was held at Camp Lejeune during the month of July. At the present time I don't recall the date. Anyway, the investigation brought forth evidence which was said to be in violation of the Supreme Court ruling. The charges were dropped due to this and other evidence in my favor which included; ① Lack of Speedy trial.

② Illegal search and seizure.

③ I was not afforded the right to counsel.

④ evidence based on hearsay.

This is all that I can recall at present, I don't know if it's of much help or not. By the way, during the (Article 32 of the Uniform Code of Military Justice) investigation I was represented by a military counsel. His name is Capt. John B. Carrico, (CARRICO) of Base Legal Assistance, Camp Lejeune, N.C.

The Lawyer that represented me in court failed to bring this information to ~~cou~~ the attention of the court.

Well, I guess that's about all for now.

Sincerely,

CENSOR'S STAMP CENSORED POLK YOUTH CENTER
By

FROM Franklin D Anderson
(Full Name of Inmate)

(Prison Number)

55
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SEDFRE

ANDREWS, JIMMY et al vs CITY OF MONROE, LA, et al., 1965-1967
(SCHOOL DESEGREGATION CASE)

Box 34
Folder 13

State Historical Society of Wisconsin

Please Retain Original Order

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER AND NEXT FRIEND, ETTA MAE ANDREWS: AND TOMMY RAY ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ODELL WILLIS, AND ALL NEGRO STUDENTS AND PARENTS SIMILARLY SITUATED,

CIVIL ACTION
NO. 11297

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W.L. HOWARD, MAYOR J.H. SCOGIN, JR. PRESIDENT OF MONROE CITY SCHOOL BOARD, F.C. BREESE, JR., L.S. DANIEL, W.S. GONNAWAY, BILLY HARGISS, MEMBERS THEREOF, AND VAN D. ODOM, SUPERINTENDANT,

Defendants.

COMPLAINT

Jurisdiction is based on the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, Title 28 U.S. Code Section 1343 (3) and (4), and Title 42 U.S. Code Sections 1981, 1983, 1985, 1986, 1988.

2. **Nature of Cause of Action**

This is a class action on behalf of plaintiffs and all other Negroes similarly situated, for damages and for an Ex Parte Temporary Restraining Order, Preliminary and Final Injunctions prohibiting the furtherance of a proposed City of Monroe School Bond Issue until defendants file with this court a fair and equitable plan for desegregation of the City of Monroe School district, and for the maintenance of the City of Monroe school system without regard to race, color, creed or national orgin, which plan shall be caused to go into affect no later than the opening of the next session of said school district. All of the other persons constitute a class too numerous to bring before the court. There are common questions of law and fact affecting all members of the class, and common relief is sought.

3. Plaintiffs

Minor and adult plaintiffs are Negro citizens of the United States, and of the State of Louisiana and are domiciled in the City of Monroe. Etta Mae Andrews is a taxpayer and Odell Willis is a registered voter and a taxpayer. Both of said plaintiffs are the mothers of children attending the Public Schools of the City of Monroe. All minor plaintiffs are attending the free, public schools of the City of Monroe, Louisiana. The remainder of the plaintiffs are citizens of the United States and the State of Louisiana, Negroes, minors, and adults, similarly situated and constitute a class so numerous as to make it impracticable to bring them all before the court. The rights sought to be enforced for them are several and there is a common question of law and fact affecting the several rights and common relief is sought.

4. Defendants

Defendant, City of Monroe, Louisiana, is a municipal corporation organized and existing under the laws of the State of Louisiana; defendant, W.L. Howard, is Mayor and Public Safety Commissioner of the City of Monroe and a member ex officio of the Monroe City School Board; defendant, J.H. Scogin, Jr., is the President of the Monroe City School Board; defendants, F.C. Breese, Jr., L.S. Daniel, W.S. Gonnaway, and Billy Hargiss are the members of the said School Board; defendant, Van D. Odom, is the Superintendent of the Monroe City school system. The City of Monroe is issuing the school bonds through or with the official aid of its Commission

Council, School Board, Mayor and Secretary-Treasurer. The City of Monroe is sued in its capacity as a municipal corporation which owns and operates its own system of free public schools by and through the Monroe City School Board, which is charged by the laws of the State of Louisiana and, more particularly, by the Charter of said city with the government, control and administration of said school system and school funds. The above-mentioned individuals are sued in their official capacities.

5. Facts

Defendants, acting under color of the laws of Louisiana, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school system in the City of Monroe, Louisiana on a racially segregated basis. Defendants maintain and operate a compulsory biracial school system and defendants make initial assignments of students to the public schools under their control on the grounds of race and color. Principals, teachers and other professional personnel under defendants' jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated. Students assigned initially to elementary schools denominated as Negro, are thereafter assigned solely to junior high and/or high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as Negro nor are assignments of students, teachers, principals or other professional personnel of the Negro race assigned to schools designated as white. Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the formulation of budgets, andthe disbursement of school funds, Specifically, defendants construct elementary, junior high and high schools with reference to the maintenance of a compulsory biracial school system. Defendants herein also limit participation in extracurricular activities in the schools to one or the other race, separately.

6. The most recent official figures available to the plaintiffs herein indicate that there are 8 white schools with 3,307 white students in grades 1 to 6, 2 white schools with 875 white students in grades 7 and 8, 124 white teachers in grades 1 through 8, and 1 white school with 1,146 white students and 103 white teachers in grades 9 through 12.

7. The most recent official figures available to the plaintiffs herein indicate that there are 3 Negro schools with 3,173 Negro students in grades 1 through 5, 1 Negro school with 950 Negro students in grades 7 and 8, 106 Negro teachers in grades 1 through 8 and 1 Negro school with 1,228 Negro students and 89 Negro teachers in grades 9 through 12.

8. April 13, 1965 a city-wide school bond issue of $6,000,000.00 was voted upon and approved by the property owners of said city. Bids on the bonds are scheduled to be submitted on August 10, 1965. Attached hereto and made part hereof is the prospectus and official statement concerning said bonds. The bonds are to be issued for the purpose of erecting and/or improving school houses, school equipment and furnishings therefor.

9. Plaintiffs apprehend and fear that the funds to be secured by the bond issue will be used to perpetuate the discriminatory segregationist practices of the past.

10. Plaintiffs allege that the City of Monroe and its School Board have an affirmative obligation and duty under the Constitution and laws of the United States and decisions thereunder to voluntarily desegregate schools.

11. Plaintiffs allege that the failure of this school board or any school board to so voluntarily desegregate their schools is a denial of rights guaranteed under the due

process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and also a violation of 42 U.S.C. 1981, 1983, 1988 (3), and 1986.

12. Plaintiffs and the members of the class which they represent are irreparably injured by the acts of defendants complained of herein. The continued operation by defendants of compulsory biracial school systems in the City of Monroe, Louisiana including the assignment of pupils, teachers, principals and other administrative personnel on the ground of race, the operation of the budgets for the schools on the basis of race, the construction of schools on the basis of race, and the programming and planning of extracurricular activities on the basis of race violate the rights, of the plaintiffs and the members of the class, secured to them by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the United States Laws and decisions. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court. Any other relief to which plaintiffs and those similarly situated might be remitted would be attended by uncertainty and delay, would involve a multiplicity of suits, cause further irreparable injury and occasion vexation and inconvenience and deny to plaintiffs and those similarly situated substantial relief.

WHEREFORE, plaintiffs pray that the court sign an Ex Parte Temporary Restraining Order enjoining defendants, their agents, representatives, employees, successors and all persons in active concert with them from:

1) Continuing to operate a compulsory biracial school system in the City of Monroe.

2) Making initial assignments of pupils to the public schools of the City based on race.

3) Assigning teachers, principals, and other professional personnel to the Public Schools on the basis of race.

4) Approving employment contracts, budgets, and disbursing funds on the basis of race.

5) Constructing elementary, junior high and high schools in the city on the basis of dual attendance areas based on race.

6) Programming and supporting extracurricular activities which are limited solely to one or the other of the races.

7) Continuing to make any other distinctions in the operation of the City schools which are based solely on race.

8) Advertising or soliciting for bids, accepting bids, accepting funds, distributing funds, or doing or having done by others any act, furthering the proposed school bond issue approved by the voters on April 13, 1965.

Said Temporary Restraining Order to remain in effect until it expires or until defendants file with the court a fair and equitable plan for desegregation of said school district and maintenance of said desegregated school district, which plan shall go into effect no later than the opening of the next school session, to wit, the session commencing in August or September, 1965.

Plaintiffs further pray that the court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing that this Honorable Court enter Preliminary and Permanent Injunctions identical to that prayed for in the Temporary Restraining Order.

Plaintiffs further pray for a judgment against defendants in the sum of $15,000.00 for their damage plus attorneys fees, expenses and costs.

Plaintiffs further pray that if this court directs defendants to submit desegregation plans that the court will retain jurisdiction of this case pending court approval and full and complete implementation of defendants' plans.

Plaintiffs further pray that this court will grant such other, further, additional or alternative relief as may appear equitable, just, and proper.

Respectfully submitted,

Jesse N. Stone, Jr., Esq.
854½ Texas Avenue
Shreveport, Louisiana

Robert F. Collins, Esq.
Niles R. Douglass, Esq.
Lolis E. Elie, Esq.
2211 Dryads Street
New Orleans, Louisiana
523-5197

James Sharp, Jr., Esq.
P.O. Box 271
105 23rd Street
Monroe, Louisiana
323-8372

Of Counsel:

Carl Rachlin
38 Park Row
New York 38, New York

Alvin J. Bronstein
603 N. Farish Street
Jackson, Mississippi

Stanley E. Tolliver
Carmack Building
Quincy Street
Cleveland, Ohio

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

No. 22,892

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JIMMY ANDREWS, et al,
Appellants

vs

J. H. SCOGIN, JR, President, Monroe
City School Board, et al, Appellees.

MOTION TO DISMISS

Now into the Court come Etta Mae Andrews, as mother and next friend of Jimmy Andrews, and Odell Willis, as mother and next friend of Tommy Ray Robinson, petitioners and appelants in this cause, appearing in proper person, who do respectfully represent and move that:

1.

They have discharged and do hereby affirm the discharge of all counsel and attorneys heretofore enrolled of record as their attorneys in this Court and in the United States District Court for the Western District of Louisiana; and petitioners and movers are not now represented by counsel.

2.

They move that these proceedings be now dismissed in their entirety in this Court, and in the United States District Court for the Western District of Louisiana; and pray for all orders necessary and appropriate thereto.

Monroe, Louisiana, this August 19, 1965.

Mrs Etta Mae Andrews
Jimmy Andrews, by his mother and next
friend, Etta Mae Andrews, in proper
person.

Odell Willis
Tommy Ray Robinson, by his mother and
next friend, Odell Willis, in proper
person.

STATE OF LOUISIANA

PARISH OF OUACHITA

Before me, the undersigned Notary Public, personally came and appeared Etta Mae Andrews and Odell Willis, to me personally known, who, being duly sworn, did depose and state:

That they are appellants and petitioners in the above styled and numbered proceedings, and movers in the above motion to dismiss these proceedings in their entirety; that they have each read the above motion and appearance, and that the facts therein recited are true and correct; that they have discharged and do hereby discharge their counsel of record in this cause, and they are presently unrepresented by any attorney or counsel; and that they do desire, seek, and pray such orders as may be proper to dismiss these proceedings in their entirety in the United States Court of Appeals for the Fifth Circuit, and in the United States District Court for the Western District of Louisiana.

Mrs Etta Mae Andrews

Etta Mae Andrews

Odell Willis

Odell Willis

Sworn to and subscribed before me, Notary Public, this 19th day of August, 1965.

Charles J. Edwards

Notary Public, Parish of Ouachita
State of Louisiana.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
AUG 26 1965
EDWARD W. WADSWORTH
CLERK

NO. 22892

JIMMY ANDREWS, Et Al.,

Appellants,

vs.

J. H. SCOGIN, JR., PRESIDENT OF
MONROE CITY SCHOOL BOARD, Et Al.,

Appellees.

Motion for Injunctive Relief Pending Appeal from the
United States District Court for the Western
District of Louisiana

Before TUTTLE, Chief Judge, GEWIN and BELL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that this cause be and it is hereby remanded to the district court for consideration of the motion of the appellants to dismiss the proceedings and for further consideration in light of Singleton v. Jackson Municipal Separate School District, et al., ____ F.2d ____, No. 22527, decided by this Court on June 22, 1965, and Price v. Denison Independent School District Board of Education, et al., ____ F.2d ____, No. 21632, decided by this Court on July 2, 1965.

XERO COPY XERO COPY XERO COPY XERO COPY

DEPOSITION SUBPOENA TO TES Y OR PRODUCE DOCUMENTS OR THINC (Revised Oct. 1953) D. C. Form No. 9

United States District Court

FOR THE

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

CIVIL ACTION FILE No. 11297

JIMMY ANDREWS, etal

vs.

CITY OF MONROE, LOUISIANA, et al

TO

YOU ARE COMMANDED to appear at the United States District Court for the Western District of Louisiana in the city of Monroe on the 17th day September , 1965 , at o'clock M. to testify on behalf of Plaintiffs

at the taking of a deposition in the above entitled action pending in the United States District Court for the Western District of Louisiana and bring with you[1]

the items on the attached sheet lettered a through k.

Dated ...., 19.........

...., ...,
Attorney for *Clerk.*

.... By...
Address *Deputy Clerk.*

---

[1] Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose.

RETURN ON SERVICE

Received this subpoena at on
and on at
served it on the within named
by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.[2]

Dated: ....,

...., 19........

Service Fees By...

Travel	....	$..........................
Services	....	
Total	....	$

Subscribed and sworn to before me, a this
day of 19

....

---

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE
ANDREWS; AND TOMMY RAY ROBINSON,
BY HIS MOTHER AND NEXT FRIEND,
ODELL WILLIS, AND ALL NEGRO
STUDENTS AND PARENTS SIMILARLY
SITUATED,

CIVIL ACTION NO. 11297

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W. L.
HOWARD, MAJOR; MONROE CITY SCHOOL
BOARD, J. H. SCOGIN, JR., PRESIDENT;
F. C. BREESE, JR., L. S. DANIEL, W. S.
GANNAWAY, BILLY HARGISS, MEMBERS
THEREOF, AND VAN D. ODOM, SUPERINTENDENT,

Defendants

TO:

* *

SUBPOENA DUCES TECUM

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Western District of Louisiana, Shreveport Division in the city of Shreveport, Louisiana on the 17th day of September, 1965 at o'clock m. to testify on behalf of plaintiffs in the above entitled action and bring with you

a. A list of all public schools operated by the School Board, showing as to each school at the present time:

(1) Name and address
(2) Grades taught
(3) Number and average size, in square feet, of classrooms,
(4) Description of other facilities, including size in square feet
(5) Date or date of construction
(6) Cost of construction
(7) Number of white pupils enrolled
(8) Number of Negro pupils enrolled
(9) As to each high school, the number of pupils who had previously attended each elementary school in the Parish
(10) Number of white teachers assigned
(11) Number of Negro teachers assigned
(12) Whether principal is white or Negro

(13) Number and job classification of other white professional personnel
(14) Number and job classification of other Negro professional personnel'
(15) Average salary of white teachers
(16) Average salary of Negro teachers
(17) Salary of principal
(18) Average salary of other white professional personnel
(19) Average salary of other Negro professional personnel
(20) Operating budget for the school year 1965-66
(21) Capital budget for the school year 1965-66

b. As to each school in which 95% or more of the pupils enrolled are white, provide a list showing:

(1) The names and addresses of any Negro pupils enrolled in the school at any time since January 1, 1965, and the period of enrollment of each

(2) The names and addresses of any Negro teachers, principals and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each

c. As to each school in which 95% or more of the pupils enrolled are Negro, provide a list showing:

(1) The names and addresses of any white pupils enrolled in the school at any time since January 1, 1955, and the period of enrollment of each.

(2) The names and addresses of any white teachers, principals and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each

d. Provide a list of all professional employees of the School Board at the present time, other than those assigned to specific schools, showing as to each:

(1) Name

(2) Whether white or Negro

(3) Salary; and

(4) General description of responsibilities and duties.

e. Provide maps showing the attendance area of each school operated by the School Board for each year from the school year 1965-66 to and including the school year 1965-66.

f. Provide copies of all rules, regulations, orders, policies practices and statements of the School Board from January 1, 1955 to the present that relate to any of the following:

(1) The enrollment, assignment, and transfer of pupils;

(2) The employment, assignment, and transfer of principals, teachers, and other professional personnel;

(3) The promotion of pupils from elementary schools to high schools;

(4) The extra-curricular activities of pupils and professional personnel; and

(5) The segregation and desegregation of the public schools in the City of Monroe.

g. Provide a statement showing, as to each school bond issue in the City of Monroe since January 1, 1955, and as to the proposed bond issue voted upon in the City of Monroe on March 30, 1965:

(1) The principal amount of the bonds;

(2) The rate of interest;

(3) The dates and amounts of repayment of principal;

(4) The increase of taxes on City property subject to taxation required for payments of principal and interests on the bonds;

(5) The application or proposed application of funds, showing the amounts applied or to be applied for construction, additions, repairs and renovation of each school operated by the School Board.

h. Provide a copy of the operating budget and of the capital budget adopted by the School Board for each year from the school year 1955-56 to and including the school year 1965-66.

i. Provide a copy of each financial report of the School Board for each year from the school year 1955-56 to and including the school year 1964-65.

j. As to the proposed bond issue voted upon in the City of Monroe on March 30, 1965; provide:

(1) A copy of every resolution adopted and statement made by the School Board relating to the bond issue;

(2) A copy of the invitation for bids;

(3) A copy of each bid received;

(4) Copies of all correspondence, communications, contracts, proposed contracts, and other documents in the possession of the School Board in respect of the bonds and the bids.

k. A copy of all reports and statistics submitted to the State Department of Education and published in the following Bulletins of the State Department of Education of Louisiana: No. 990-1962, No. 1005-1963, No. 1031-1964.

AFFIDAVIT

STATE OF LOUISIANA
OUACHITA PARISH
CITY OF MONROE

ETTA MAE ANDREWS, being duly sworn, deposes and says:

1. I am a Negro citizen of the United States, a resident of the City of Monroe, Parish of Ouachita, State of Louisiana, a taxpayer of said City, and the mother of Jimmy Andrews, a minor who attends a public school in the City of Monroe, Louisiana.

2. The public schools of the City of Monroe, Louisiana have been and are maintained by the defendants herein as a compulsory biracial system on a segregated basis. The white schools have more teachers per student and better facilities. I and the members of the class I represent are discriminated against in school construction, the formulation of budgets, and the disbursement of school funds. Extra curricular activities are conducted on a segregated basis. Professional personnel, teachers and students are assigned on a racial basis and in no case are Negro students, teachers, or professional personnel assigned to white schools. In no case are white students, teachers, or professional personnel assigned to Negro schools.

3. On April 13, 1965 the residents of the City of Monroe, Louisiana voted to approve the City-wide school bond issue of $6,000,000.00. Bids on said bonds are scheduled to be submitted on August 10, 1965. The bonds are to be issued for the purposes of building and improving school buildings, equipment, and furnishings.

4. I apprehend and fear that the funds to be secured by the bond issue will be used to perpetuate the discriminatory segregationist practices of the past.

5. I and the members of the class which I represent will suffer irreparable and immediate harm by the continued operation of said racially segregated school system in the City of Monroe, Louisiana, by the lact of a fair and equitable plan for school desegregation in the City of Monroe, and by the solicitation and acceptance of bids or funds or the doing of any acts in furtherance of said proposed school bond issue.

6. The above statement is sworn to be true and correct to the best of my knowledge this 6th day of August, 1965.

Mrs. Etta Mae Andrews

Attest:
Allen D. Evans
Hellen O'Neal

Sworn to and subscribed before
me this ________ day of August, 1965.

____
Notary Public
My commission expires
____

CADDO PARISH, STATE OF LOUISIANA

On this 6th day of August, 1965, before me, Jerome L. Powell Notary, personally came Hellen O'Neal and Allen D. Evans both of whom, after being duly sworn, deposed and acknowledged to me, Notary, that they actually saw Etta Mae Andrews sign the foregoing instrument.

Hellen O'Neal
Allen D. Evans

Sworn to and subscribed this 6th day of August, 1965.

Jerome L. Powell
Notary Public

AFFIDAVIT

STATE OF LOUISIANA
OUACHITA PARISH
CITY OF MONROE

ODELL WILLIS, being duly sworn, deposes and says:

1. I am a Negro citizen of the United States, a resident of the City of Monroe, Parish of Ouachita, State of Louisiana, a taxpayer and a registered voter of said City, and the mother of Tommy Ray Robinson, a minor who attends a public school in the City of Monroe, Louisiana.

2. The public schools of the City of Monroe, Louisiana have been and are maintained by the defendants herein as a compulsory biracial system on a segregated basis. The white schools have more teachers per student and better facilities. I and the membersoof the class I represent are discriminated against in school construction, the formulation of budgets, and the disbursement of school funds. Extra curricular activities are conducted on a segregated basis. Professional personnel, teachers and students are assigned on a racial basis and in no case are Negro students, teachers, or professional personnel assigned to white schools. In no case are white students, teachers, or professional personnel assigned to Negro Schools.

3. On April 13, 1965, the residents of the City of Monroe, Louisiana voted to approve the City-wide school bond issue of $6,000,000,00. Bids on said bonds are scheduled to be submitted on August 10, 1965. The bonds are to be issued for the purposes of building and improving school buildings, equipment, and furnishings.

4. I apprehend and fear that the funds to be secured by the bond issue will be used to perpetuate the discriminatory segregationist practices of the past.

5. I and the members of the class which I represent will suffer irreparable and immediate harm by the continued operation of said racially segregated school system in the City of Monroe, Louisiana, by the lack of a fair and equitable plan for school desegregation in the City of Monroe, and by the solicitiation and acceptance of bids or funds or the doing of any acts in furtherance of said proposed school bond issue.

6. The above statement is sworn to be true and correct to the best of my knowledge this 5th day of August, 1965

Attest:

Allen Evans

Hellen O'Neal

Odell Willis

Sworn to and subscribed before me this ________ day of August, 1965.

____
Notary Public

My commission expires

____
CADDO PARISH, STATE OF LOUISIANA

On this 6TH day of August, 1965 before me, JEROME T. POWELL Notary, personally came HELLEN O'NEAL and ALLEN D. EVANS Both of whom, after being duly sworn, deposed and acknowledged to me, Notary, that they actually saw Odell Willis sign the foregoing instrument.

Allen Evans

Hellen O'Neal

Sworn to and subscribed this 6TH day of August, 1965.

Jerome T. Powell
Notary Public

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JIMMY ANDREWS, et al.,

Appellants,

vs. NO. ____________

J. R. SCOGIN, JR., PRESIDENT OF
MONROE CITY SCHOOL BOARD, et al.,

Appellees.

OPPOSITION OF APPELLEES

Now, into Court, through undersigned counsel, come MONROE CITY SCHOOL BOARD, J. R. SCOGIN, JR., President, and VAN D. ODOM, Superintendent, made Appellees by Appellants' Motion filed August 16, 1965, and oppose such Motion for Injunctive Relief pending Appeal for, this to-wit:

1.

Answering Paragraph 1 of such Motion, it is admitted there is a Negro student by the name of Tommy Ray Robinson, born April 22, 1949, who was enrolled in Carroll High School in the 10th grade during the 1964-65 school year; and, that there is a Negro student by the name of Jimmie Donald Andrews, born May 27, 1947, who was enrolled in Carroll High School in the 11th grade during the 1964-65 school year; otherwise, the allegations are denied.

2.

It is admitted that one of Appellees is President of the City of Monroe School Board, but otherwise the allegations are denied.

3.

It is admitted that on August 5, 1965, a suit entitled Andrews, et al. v. City of Monroe, Louisiana, Civil Action No. 11297, was filed in the United States District Court, Western District of Louisiana, Monroe Division, and that citation and service was made on various named Defendants from August 7, 1965 through August 12, 1965, thus making answer due in various instances from August 26, 1965 to September 2, 1965; and, that on August 9, 1965, a "Motion to Amend or Supplement Complaint" was filed to supplement original complaint by filing verifications or affidavits of parents of minors, which Motion was allowed and copy served on Defendants on or about August 11, 1965; an unverified copy of a "Second Motion to Amend Complaint" was received through U. S. Mail from attorneys to make changes in the caption and in status of Defendants, but Appellees have no knowledge that such was actually filed; then on August 19, 1965, Plaintiffs filed "Motion for Leave to File Request for Admissions (Rule 36A)", which was allowed; and on August 13, 1965, "Request for Admissions Under Rule 36", containing 56 "admissions" was mailed to four of Defendants, and received on August 16, 1965; and that Appellees have no service from the District Court granting an injunction of any nature; otherwise Paragraph 3 is denied, especially the allegation relative to complaint filed in District Court being based on "Title IV of the Civil Rights Act of 1964 (78 Stat. 241)" for the reason that Paragraph 1 of the original complaint bases its actions on 14th Amendment, Title 28 U.S.C.A. Section 1343(3) and (4), "and Title 42 U. S. Code Sections 1981, 1983, 1985, 1986, 1988", thus ignoring entirely Public Law 88-352 of 1964, (U.S.C.A. Subchapter IV, Title 42:2000 c and its subparts).

4.

Admits allegations of Paragraph 4, because such answer is not legally due before August 28, 1965.

5.

Paragraph 5 is denied, because Appellants have no knowledge of this.

6.

Paragraph 6 requires no answer.

7.

Paragraph 7 is denied because of its verbiage and apparent inflammatory remarks, and for the further reason it contains untruths based on the opinions of pleaders and not on facts, and is an effort to forecast a defense which has not been made, and one which will not be made because it would not be true nor sound; and, further denies and objects to allegations contained herein for the reason that pleaders actually know nothing of the true situation existing and have never made an inquiry nor any effort of any nature, prior to filing this suit, to discover the true facts; and, further that the false premise on which this is based can be conclusively proven if the "Civil Rights Act of 1964" is followed as passed by Congress, which in effect abrogates, to a large degree, Brown v. Board of Education, and others, especially, and for example, 42 U.S.C.A. 2000 c 2, 3, 4 and 5; and, further objects for the reason that neither Plaintiff nor any other Negro student has requested a transfer that would have allowed Appellees an opportunity to grant or refuse such application, during the same period of time of which Plaintiffs complain; and further objects because not one of Appellees, nor collectively, have any authority over the U. S. District Court and its actions and intends to file within the time allowed by law proper pleadings that will comply with existing laws.

6.

Paragraph 6 is denied and objected to, for this to-wit:

(a) In April, 1965, the Monroe City School Board set the opening of the 1965-66 school year as August 30, 1965, and publicized such fact by all available news media in the area.

(b) Cooper v. Aaron cited by Plaintiffs-Appellants justifies objections of Defendants-Appellees as there exist relevant factors (excluding hostility to racial desegration) for Appellees to be heard either by the District Court or this Honorable Court, before irreparable damage and injury are done to an entire community and educational system of a large area, primarily because pleaders have not made proper investigation nor inquiries, and because all of them, save one, know nothing of the relevant factors or anything else about the educational system, people nor economic conditions of this area, all of which can be shown to this Honorable Court, or any other court, if given the opportunity, and this does not include "administrative difficulties" nor a "recalcitrant school board" as alleged by Appellants; and further object to apparent reflection on the District Court, wherein as in truth the proposed order submitted to the District Court by Plaintiffs was for the purpose of enjoining the sale of $6,000,000 capital improvement bonds, if true copies of same were furnished by Appellants to Appellees.

9.

Paragraph 9 of Appellants' Motion is denied and objected to on the ground that it assumes a defense for Appellee which is not true, and until given an opportunity to present the truth to this Honorable Court, or any other judicial forum, will really cause irreparable injury to an entire community and area, and to the educational process of all students in the area.

Further, objection is made because Appellants speak of "good faith", and yet do not give Appellees an opportunity to present anything to any court on which a finding of good or bad faith can be made; and, further object because Appellants are by their own actions denying to Appellees the provisions of the Civil Rights Act of 1964; and, further Appellees oppose because not one of them is interested in, nor defending on, the ground of "administrative mechanics", nor any other similar technicality, and, if given the opportunity or right can clearly demonstrate the soundness of its position, plan and good faith.

10.

Appellees object to the allegations in Paragraph 10 for the reason that the premises therein are false, and there exists evidence to the contrary, if Appellees are given the opportunity to introduce same, and which will convince this Honorable Court, and any other judicial forum, that the position of the Appellees is not only tenable, and feasible but entirely within the framework of law, including the Civil Rights Act of 1964; further object to Appellants' allegations because the Appellants themselves, and all others like them, and all students in the educational system in this area, will suffer irreparable damage if the bond issue is not delivered and sold on the date now fixed, the best bid having been accepted on August 9, 1965, all of which can be conclusively shown to this Honorable Court, or any other judicial forum, if opportunity is granted.

11.

Appellees further answering this Motion respectfully show that the interests of justice and equity will best be served, including that of these Appellants and others like them, if a hearing by this Honorable Court, or any other judicial forum, is permitted at any date or hour in the near future; and, Appellees allege that such hearing is entirely within the spirit of the Civil Rights Act of 1964, especially those provisions cited supra.

WHEREFORE, Appellees oppose the Motion of Appellants for the reasons set forth herein and pray this Honorable Court that:

(a) The Motion be denied and dismissed at Appellants costs.

(b) In the alternative, and alternative only, should (a) be refused, that Appellants be required to furnish adequate bond to cover any damages suffered by Appellees in not being allowed to deliver and sell the $6,000,000 capital improvement bond issue, including architects and engineers fees, already and to be incurred, and all other losses possible in higher rates of interest, and additional legal and advertising costs, all being a direct burden on the taxpayers of the City of Monroe, Louisiana.

(c) Further, in the alternative, and alternative only, should (a) be refused then that a date and hour be set before this Honorable Court for a hearing on the opposition that Appellees might demonstrate that they are in Court "with clean hands", and that irreparable injury and damage will be done all parties directly and indirectly concerned, if prayers of Appellant are allowed.

(d) Further prays for all general and equitable relief in the premises.

ALBIN P. LASSITER,
DISTRICT ATTORNEY,
COURTHOUSE BUILDING,
MONROE, LOUISIANA.

CERTIFICATE

This will certify that a copy of this Opposition to Motion was placed in the United States Mail, bearing sufficient postage, addressed to the following counsel for Appellants:

(1) Robert F. Collins,
Attorney-at-Law,
2211 Dryades Street,
New Orleans, Louisiana .

(2) Jesse N. Stone, Jr.,
Attorney-at-Law,
854½ Texas Avenue,
Shreveport, Louisiana.

(3) James Sharp, Jr.,
Attorney-at-Law,
P. O. Box 271,
Monroe, Louisiana .

(4) Haskell A. Kassler,
Attorney-at-Law,
One State Street,
Boston, Massachusetts.

(5) Carl Rachlin,
Attorney-at-Law,
38 Park Row,
New York 38, New York.

(6) Alvin J. Bronstein,
Attorney-at-Law,
603 North Farish Street,
Jackson, Mississippi.

Done this ______ day of August, 1965.

____
ALFIN F. LASSITER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

---------------------------------------x

JIMMY ANDREWS BY HIS MOTHER AND NEXT FRIEND, ETTA MAE ANDREWS: AND TOMMY RAY ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ODELL WILLIS, AND ALL NEGRO STUDENTS AND PARENTS SIMILARLY SITUATED,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W.L. HOWARD, MAYOR; MONROE CITY SCHOOL BOARD; J.H. SCOGIN, JR., PRESIDENT; F.C. BREESE, JR., L.S. DANIEL, W.S. GANNAWAY, BILLY HARGISS, MEMBERS THEREOF, AND VAN D. ODOM, SUPERINTENDANT,

Defendants.

---------------------------------------x

CIVIL ACTION

NO. 11297

CERTIFICATE OF SERVICE
OF
MOTION TO AMEND OR SUPPLEMENT COMPLAINT

I certify that copies of the MOTION TO AMEND OR SUPPLEMENT COMPLAINT, filed in the above-entitled and numbered action in this Court on August 6, 1965 and of the SECOND MOTION TO AMEND COMPLAINT, filed in the above-entitled and numbered action in this Court on August ,1965 were mailed to the City of Monroe School Board c/o J.H. Scogin, Jr., President, and Van D. Odom, Superintendant, Box 4180, Monroe, Louisiana, and to the City of Monroe, W.L. Howard, Mayor, City Hall, Monroe, Louisiana, by United States Mail, postage prepaid on August , 1965.

Respectfully submitted,

s/Jesse N. Stone Jr.

Appeals, which was denied by the Court, all for the sole purpose of causing injury and damages to Defendants.

2.

Attached hereto is photostatic copy of New York Times, Sunday, August 15, 1965, wherein "Carl Rachlin, chief counsel for the Congress of Racial Equality" verifies the allegations in Paragraph One, supra.

3.

Defendants allege that this suit is delaying, and may prevent entirely the delivery of the bonds, and in such event Defendants, especially the Monroe City School Board, will suffer damages, expenses and costs from the actions of these Complainants and the attorneys representing them and the Congress of Racial Equality, and, therefore, Defendants are entitled to reserve all rights and actions against these Complainants and all attorneys in this suit, the Congress of Racial Equality, and all others party to this suit, for any damages, expenses, costs, or losses caused by this illegal procedure.

WHEREFORE, Defendants pray this amended and supplemental answer be allowed filed, and that all the rights and actions of these Defendants be reserved, and in no manner waived, against these Complainants, the attorneys of record representing them, Congress of Racial Equality, and all others party to this suit, for any damages, expenses, costs or losses caused by this illegal action of obstructing the sale and delivery of the $6,000,000 bond issue; and for general and equitable relief in the premises.

ALBIN P. LASSITER
DISTRICT ATTORNEY
OUACHITA PARISH COURTHOUSE
MONROE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE ANDREWS:
AND TOMMY RAY ROBINSON, BY HIS
MOTHER AND NEXT FRIEND, ODELL WILLIS, :
AND ALL NEGRO STUDENTS AND PARENTS
SIMILARLY SITUATED,

PLAINTIFFS :

vs.

CITY OF MONROE, LOUISIANA,
W.L. HOWARD, MAYOR, J.H.
SCOGIN, JR. PRESIDENT OF
MONROE CITY SCHOOL BOARD, F.C. :
BREESE, JR., L.S. DANIEL, W.S.
GANNAWAY, BILLY HARGISS, MEMBERS
THEREOF, AND VAN D. ODOM,
SUPERINTENDANT, :

DEFENDANTS.

CIVIL ACTION
NO. 11297

SECOND MOTION TO AMEND COMPLAINT

Now into Court comes Jimmy Andrews by his mother and next friend, Etta Mae Andrews, and Tommy Ray Robinson, by his mother and next friend, Odell Willis, plaintiffs in the above-entitled matter and ask leave of court pursuant to Rule 15 of the Federal Rules of Civil Procedure to amend their complaint and summons in this action in the following respects:

1. The the caption of the summons and complaint in this action be changed to:

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE
ANDREWS: AND TOMMY RAY
ROBINSON, BY HIS MOTHER AND
NEXT FRIEND, ODELL WILLIS,
AND ALL NEGRO STUDENTS AND
PARENTS SIMILARLY SITUATED ,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W.L.
HOWARD, MAYOR; MONROE CITY
SCHOOL BOARD; J.H. SCOGIN, JR.,
PRESIDENT; F.C. BREESE, JR., L.S.
DANIEL, W.S. GANNAWAY, BILLY
HARGISS; MEMBERS THEREOF, AND
VAN D. ODOM, SUPERINTENDANT,

Defendants.

James Sharp, Jr., Esq.
P.O. Box 271
105 North 23rd Street
Monroe, Louisiana
325-8372

of Counsel:

Carl Rachlin
38 Park Row
New York 38, New York

Alvin J. Bronstein
603 North Parish Street
Jackson, Mississippi

Stanley E. Tolliver
Carmack Building
Quincy Street
Cleveland, Ohio

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

ORDER

Upon consideration of the foregoing motion, it is hereby ORDERED, ADJUDGED and DECREED that the summons and complaint in this action be amended to read as stated above.

Shreveport, Louisiana, ________ 1965

UNITED STATES DISTRICT JUDGE

2. That paragraph 4 of the complaint should read:

Defendants

Defendant, City of Monroe, Louisiana, is a municipal corporation organized and existing under the laws of the State of Louisiana; defendant, W.L. Howard, is Mayor and Public Safety Commissioner of the City of Monroe and a member ex officio of the Monroe City School Board; defendant, the Monroe City School Board is an unincorporated governmental agency of the City of Monroe; defendant, J.H. Scogin, Jr., is the President of the Monroe City School Board; defendants, F.C. Breese, Jr., L.S. Daniel, W.S. Gannaway, and Billy Hargiss are the members of said School Board; defendant, Van D. Odom, is the Superintendant of the Monroe City School System. The City of Monroe is issuing the school bonds through or with the official aid of its Commission Council, School Board, Mayor and Secretary-Treasurer. The City of Monroe is sued in its capacity as a municipal corporation which owns and operates its own system of free public schools by and through the Monroe City School Board, which is sued as a governmental agency charged by the laws of the State of Louisiana and more particularly, by the Charter of said city, with the government, control and administration of said school system and school funds. The above-mentioned individuals are sued in their official and individual capacities.

The grounds of this motion are to avoid technical objections based on the misjoinder or nonjoinder of parties due to the precise wording of the original complaint herein.

Respectfully submitted,

s/ Jesse N. Stone, Jr
Jesse N. Stone, Jr., Esq.
854½ Texas Avenue
Shreveport, Louisiana

Robert F. Collins, Esq.
Niles R. Douglas, Esq.
Lolis E. Elie, Esq.
2211 Dryads Street
New Orleans, Louisiana
523-5197

Monroe School

[1965, August 23]

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

JIMMIE ANDREWS by his
Next Fried and Mother,
ETTA MAE ANDREWS, et al.

Plaintiffs

vs. CIVIL ACTION NO. 11297

CITY OF MONROE, LOUISIANA,
et al.,

Defendants

* *

MOTION

Now comes Jimmie Andrews, one of the plaintiffs in the above captioned matter by his next friend and mother, Etta Mae Andrews, and by his attorneys, Collins, Douglas & Elie, and respectfully moves this Court for an order permitting him to withdraw his motion to dismiss filed in case No. 22,892 in the United States Court of Appeals for the Fifth Circuit and,

AS GROUNDS THEREFOR, plaintiff asserts that said motion was filed at the instigation and under the influence of the defendants, and that he desires to continue to retain as counsel the law firm of Collins, Douglas & Elie, 2211 Dryades Street, New Orleans, Louisiana and Alvin J. Bronstein, 603 N. Farish Street, Jackson, Mississippi and any other attorney associated with them or any authorized representative of theirs to prosecute the instant case, as shown by the affidavit attached hereto and incorporated herein by reference.

JIMMIE ANDREWS, BY HIS NEXT
FRIEND AND MOTHER, ETTA MAE
ANDREWS

COLLINS, DOUGLAS & ELIE
ATTORNEYS FOR PLAINTIFFS
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: ____________________

CERTIFICATE

I, ROBERT F. COLLINS, hereby certify that copies of this Motion have been mailed to opposing counsel by depositing same in the U. S. Mail postage prepaid.

ROBERT F. COLLINS

I, ETTA MAE ANDREWS, do hereby reaffirm my retention of Collins, Douglas, and Elie, 2211 Dryads St., New Orleans, Louisiana, Alvin J. Bronstein, 603 N. Farish St., Jackson, Mississippi, and any other attorney associated with them or any authorized representative of theirs, to represent me in any suit or other matters which may arise in connection with the City of Monroe School Bond Issue. I first retained the above attorneys with a signed retainer agreement dated August 3, 1965.

Specifically, I reaffirm my intention of having the above attorneys continue to represent me in the following action in the United States District Court, Western District of Louisiana:

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE ANDREWS; et. al.
Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, et. al.
Defendants.

CIVIL ACTION NO. 11297

I do not wish to have the suit withdrawn.

Signed: Mrs. Etta Mae Andrews
Etta Mae Andrews
912 S. 18th Street
Monroe, Louisiana

Witnesses: ____________________ ____________________

Address: ____________________ ____________________

____________________ ____________________

____________________ ____________________

Dated: ____________________

SWORN TO AND SUBSCRIBED
BEFORE ME ON THIS 23
DAY OF AUGUST, 1965.,

NOTARY PUBLIC

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

August 26, 1965

Clerk
U. S. District Court
Shreveport, Louisiana

Re: No. 22892 - Jimmy Andrews, et al
-vs- J. H. Scogin, President Monroe City School Board, et al
(Your No. 11297-Civil Action)

Dear Sir:

Find enclosed certified copy of order this date entered by the Court issued as and for the mandate. Enclosed also is a copy of the Singleton and Price decisions referred to therein.

Since this Court has remanded this case to your court for consideration of the motion of the appellants to dismiss the proceedings, the original motion to dismiss is enclosed herewith.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH,
CLERK

By G.F. Ganucheau
G. F. Ganucheau
Deputy Clerk

/lgc
Enc.
cc and copy of order to:
Mr. Nils R. Douglas
Mr. Haskell A. Kassler
Mr. Alvin J. Bronstein
Mr. James Sharp, Jr.
Mr. Jesse N. Stone, Jr.
Mr. Carl Rachlin
Mr. Alvin P. Lassiter
Hon. Jack P. F. Gremillion
Mr. Haynes Harkey, Jr.
Mr. Harold B. Judell
Mr. W. F. Pipes, Jr.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
AUG 26 1965
EDWARD W. WADSWORTH
CLERK

NO. 22892

JIMMY ANDREWS, Et Al.,

Appellants,

vs.

J. H. SCOGIN, JR., PRESIDENT OF
MONROE CITY SCHOOL BOARD, Et Al.,

Appellees.

Motion for Injunctive Relief Pending Appeal from the
United States District Court for the Western
District of Louisiana

Before TUTTLE, Chief Judge, GEWIN and BELL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that this cause be and it is hereby remanded to the district court for consideration of the motion of the appellants to dismiss the proceedings and for further consideration in light of Singleton v. Jackson Municipal Separate School District, et al., ____ F.2d ____, No. 22527, decided by this Court on June 22, 1965, and Price v. Denison Independent School District Board of Education, et al., ____ F.2d ____, No. 21632, decided by this Court on July 2, 1965.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE
ANDREWS: AND TOMMY RAY
ROBINSON, BY HIS MOTHER AND
NEXT FRIEND, ODELL WILLIS,
AND ALL NEGRO STUDENTS AND
PARENTS SIMILARLY SITUATED,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA,
W. L. HOWARD, MAYOR,
J. H. SCOGIN, JR., PRESIDENT OF
MONROE CITY SCHOOL BOARD,
F. C. BREESE, JR., L. S. DANIEL,
W. S. GONNAWAY, BILLY HARGISS,
MEMBERS THEREOF, AND VAN
D. ODOM, SUPERINTENDENT,

Defendants.

CIVIL ACTION

NO. 11297

ANSWER

Now, into Court through undersigned counsel come MONROE CITY SCHOOL BOARD, J. H. SCOGIN, JR., President of Monroe City School Board, and VAN D. ODOM, Superintendent, made Defendants herein, and being the only Defendants named who were served and in answer to the complaint, with respect, aver that:

1.

Paragraph 1 is admitted except that it is affirmatively alleged that U.S.C.A. sub-chapter IV, Title 42:2000c and its subparts is the governing law relative to "public education".

2.

Paragraph 2 of Plaintiffs' complaint is denied.

3.

Paragraph 3 of Plaintiffs' complaint is denied.

4.

Paragraph 4 of Plaintiffs' complaint is denied.

5.

Paragraph 5 of Plaintiffs' complaint is denied.

6.

Further answering Plaintiffs' complaint, Defendants now show that the Defendants are ready and willing to comply with any reasonable orders of this Court, after full hearing had and all circumstances and benefits of such law have been applied.

7.

Further answering Plaintiffs' complaint, Defendants show that the allegations of the complaint if allowed to stand will cause irreparable and immediate damage and injury to the Plaintiffs themselves and all other persons in the Monroe City School District, as will appear on the trial hereof.

WHEREFORE, Defendants pray that after due proceedings had and hearing held in this entire matter before this Honorable Court that the proper order be entered after all circumstances and conditions are shown in the hearing to the satisfaction of this Honorable Court; and further pray for all general and equitable relief in the premises.

ALBIN P. LASSITER
ATTORNEY-AT-LAW
OUACHITA PARISH COURT HOUSE
MONROE, LOUISIANA

CERTIFICATE

This will certify that on this date a copy of this answer was placed in the United States Mail addressed to the following attorneys of record for the Plaintiffs, to-wit:

Jesse N. Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

James Sharp, Jr., Esq.
P. O. Box 271
105 N. 23rd Street
Monroe, Louisiana

Alvin J. Bronstein
603 N. Farish Street
Jackson, Mississippi

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

Robert F. Collins, Esq.
Niles R. Douglas, Esq.
Lolis E. Elie, Esq.
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Haynes Harkey, Jr.
Attorney-at-Law
1504 Stubbs Avenue
Monroe, Louisiana

Monroe, Louisiana, this 27th day of August, 1965.

ALBIN P. LASSITER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE ANDREWS:
AND TOMMY RAY ROBINSON, BY HIS
MOTHER AND NEXT FRIEND, ODELL
WILLIS, AND ALL NEGRO STUDENTS AND
PARENTS SIMILARLY SITUATED,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W.L.
HOWARD, MAYOR; MONROE CITY SCHOOL
BOARD, J.H. SCOGIN, JR., PRESIDENT;
F.C. BREESE, JR., L.S. DANIEL, W.S.
GANNAWAY, BILLY HARGISS, MEMBERS
THEREOF, AND VAN D. ODOM, SUPERINTENDENT,

Defendants.

CIVIL ACTION

NO. 11297

REQUEST FOR ADMISSIONS
UNDER RULE 36

Plaintiffs request defendants within 13 days after mailing of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissability which may be interposed at the trial:

I. That each of the following statements are true.

1. Plaintiff Jimmy Andrews, is an infant.
2. Plaintiff Tommy Ray Robinson is an infant.
3. Plaintiff Etta Mae Andrews is an adult.
4. Plaintiff O'Dell Willis is an adult.
5. All the foregoing plaintiffs are Negro.
6. All the foregoing plaintiffs are citizens of the United States.
7. All the foregoing plaintiffs are citizens of the State of Louisiana.
8. All the foregoing plaintiffs are domiciled in the City of Monroe.
9. O'Dell Willis is a registered voter in Ouachita Parish.

10. O'Dell Willis is a taxpayer.

11. Etta Mae Andrews is a taxpayer.

12. Etta Mae Andrews is the mother of Jimmy Andrews.

13. O'Dell Willis is the mother of Tommy Ray Robinson.

14. The infant plaintiffs are students in the free public schools of Monroe, Louisiana.

15. There are in the free public schools of Monroe , Louisiana other infant Negro students.

16. Defendant Monroe City School Board (hereinafter referred to as Board.), is an unincorporated governmental agency of the City of Monroe.

17. Defendant Board is a governmental agency charged by the laws of Louisiana and by the Charter of the City of Monroe with the control and administration of the Monroe school system and its school funds.

18. Defendant Board is presently operating such system.

19. Defendant W.L. Howard is Mayor of the City of Monroe and a member ex officio of the Board.

20. Defendant J.H. Scogin, Jr., is the President of the Board.

21. Defendant Van D. Odom is Superintendent of the Monroe City School System.

22. The other named defendants are members of the Board.

23. The City of Monroe is a municipal corporation which owns and operates its own system of free public schools.

24. No Negro child has ever been a student in the same school simultaneously with a white child or children in any school operated by Defendant Board or subject to its jurisdiction.

25. During the school semester which terminated in the Spring of 1965 no Negro child was a student simultaneously in any class in which a white child or children were students in any school operated by Defendant Board or subject to its jurisdiction.

26. No Negro Teacher has ever taught a class in which there was a white child or children in any school operated by or subject to the jurisdiction of Defendant Board.

27. During the school semester which ended in the Spring of 1965 no Negro teacher taught a white child or children in any school operated by or subject to the jurisdiction of Defendant Board.

28. The system of schools operated by Defendants consist of several schools located at public places within the City. Some of the said schools have only white pupils.

29. Some of the said schools have only Negro pupils.

30. No Negro teacher is employed to teach in any of the schools where only white children attend.

31. Students are initially assigned to a particular school by Defendant Board based in part upon the race or color of the student concerned.

32. Principals, teachers and other professional personnel are assigned to schools within the jurisdiction of Defendants on the basis of race or color among other considerations.

33. Certain schools under Defendants' jurisdiction are designated "white."

34. Certain schools under Defendants' jurisdiction are designated "Negro."

35. Students initially assigned to elementary schools designated as "white" are thereafter assigned to high schools similarly designated.

36. Students initially assigned to elementary schools designated as "Negro" are thereafter assigned to high schools similarly designated.

37. In no case are assignments of students, teachers, principals or other professional personnel of the white race made to schools designated as "Negro."

38. In no case are assignments of students, teachers, principals or other professional personnel of the Negro race made to schools designated as "white."

39. Defendants operate a program of extracurricular activities as part of or in association with the schools operated by them.

40. Such extracurricular activities are operated separately for Negro and white.

41. The most recent official figures on the operation of the Monroe School System available to the general public cover the school year 1963-1964.

42. During the school year 1963-1964 there were 11 white schools and 5 Negro schools.

43. During that year there were 4,182 white students in grades first through eighth with 124 white teachers.

44. During that year there were 4,123 Negro students in grades first through eighth with 106 Negro teachers.

45. During that year there were 1,146 white students in grades ninth through twelfth with 103 white teachers.

46. During that year there were 1,228 Negro students in grades ninth through twelfth with 89 Negro teachers.

47. The funds to be secured by the bond issue voted on April 13, 1965 will be used to perpetuate the segregated school system now operated.

48. Defendants have adopted no plan for desegregation or integration of the teachers, principals and other professional personnel.

49. Defendants have adopted no plan for the desegregation or integration of the schools subject to their jurisdiction.

50. The budget adopted from time to time by Defendant Board have contained separate construction for Negro and white facilities.

51. The most recent budget adopted by Defendant Board makes allotments for Negro and white facilities and operation.

52. The case of *Brown vs. Board of Education*, 347 U.S. 483, 349 U.S. 274, has neither been overruled nor reversed.

53. The Defendants have taken no action to conform the operation of the schools subject to their jurisdiction to the requirements set out by the Supreme Court of the United States in Brown against Board and subsequent decisions.

54. The forms of applications for admission to the schools under the jurisdiction of Defendants are different for Negro and white.

55. The forms of applications for admission to the schools under the jurisdiction of Defendants provide for inquiry as to whether the applicant is Negro or white.

56. The forms of registration of students employed in the schools subject to the jurisdiction of Defendants are designed as to make the designation of the race of prospective students known to the administrative personnel, of such schools.

S/ JESSE N. STONE, JR
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854½ Texas Avenue
Shreveport, Louisiana

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Of Counsel:

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38 Park Row
New York 38, New York

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Cleveland, Ohio

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

AUG 2 3 [illegible]

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JIMMY ANDREWS, et al.,

Appellants,

vs. NO. ___________

J. H. SCOGIN, JR., PRESIDENT OF
MONROE CITY SCHOOL BOARD, et al.,

Appellees.

OPPOSITION OF APPELLEES

Now, into Court, through undersigned counsel, come MONROE CITY SCHOOL BOARD, J. H. SCOGIN, JR., President, and VAN D. ODOM, Superintendent, made Appellees by Appellants' Motion filed August 16, 1965, and oppose such Motion for Injunctive Relief pending Appeal for, this to-wit:

1.

Answering Paragraph 1 of such Motion, it is admitted there is a Negro student by the name of Tommy Ray Robinson, born April 22, 1949, who was enrolled in Carroll High School in the 10th grade during the 1964-65 school year; and, that there is a Negro student by the name of Jimmie Donald Andrews, born May 27, 1947, who was enrolled in Carroll High School in the 11th grade during the 1964-65 school year; otherwise, the allegations are denied.

2.

It is admitted that one of Appellees is President of the City of Monroe School Board, but otherwise the allegations are denied.

3.

It is admitted that on August 5, 1965, a suit entitled Andrews, et al. v. City of Monroe, Louisiana, Civil Action No. 11297, was filed in the United States District Court, Western District of Louisiana, Monroe Division, and that citation and service was made on various named Defendants from August 7, 1965 through August 12, 1965, thus making answer due in various instances from August 28, 1965 to September 2, 1965; and, that on August 9, 1965, a "Motion to Amend or Supplement Complaint" was filed to supplement original complaint by filing verifications or affidavits of parents of minors, which Motion was allowed and copy served on Defendants on or about August 11, 1965; an unverified copy of a "Second Motion to Amend Complaint" was received through U. S. Mail from attorneys to make changes in the caption and in status of Defendants, but Appellees have no knowledge that such was actually filed; then on August 10, 1965, Plaintiffs filed "Motion for Leave to File Request for Admissions (Rule 36A)", which was allowed; and on August 13, 1965, "Request for Admissions Under Rule 36", containing 56 "admissions" was mailed to four of Defendants, and received on August 16, 1965; and that Appellees have no service from the District Court granting an injunction of any nature; otherwise Paragraph 3 is denied, especially the allegation relative to complaint filed in District Court being based on "Title IV of the Civil Rights Act of 1964 (78 Stat. 241)" for the reason that Paragraph 1 of the original complaint bases its actions on 14th Amendment, Title 28 U.S.C.A. Section 1343(3) and (4), "and Title 42 U. S. Code Sections 1981, 1983, 1985, 1986, 1988", thus ignoring entirely Public Law 88-352 of 1964, (U.S.C.A. Subchapter IV, Title 42:2000 c and its subparts).

4.

Admits allegations of Paragraph 4, because such answer is not legally due before August 28, 1965.

5.

Paragraph 5 is denied, because Appellants have no knowledge of this.

6.

Paragraph 6 requires no answer.

7.

Paragraph 7 is denied because of its verbiage and apparent inflammatory remarks, and for the further reason it contains untruths based on the opinions of pleaders and not on facts, and is an effort to forecast a defense which has not been made, and one which will not be made because it would not be true nor sound; and, further denies and objects to allegations contained herein for the reason that pleaders actually know nothing of the true situation existing and have never made an inquiry nor any effort of any nature, prior to filing this suit, to discover the true facts; and, further that the false premise on which this is based can be conclusively proven if the "Civil Rights Act of 1964" is followed as passed by Congress, which in effect abrogates, to a large degree, Brown v. Board of Education, and others, especially, and for example, 42 U.S.C.A. 2000 c 2, 3, 4 and 5; and, further objects for the reason that neither Plaintiff nor any other Negro student has requested a transfer that would have allowed Appellees an opportunity to grant or refuse such application, during the same period of time of which Plaintiffs complain; and further objects because not one of Appellees, nor collectively, have any authority over the U. S. District Court and its actions and intends to file within the time allowed by law proper pleadings that will comply with existing laws.

8.

Paragraph 8 is denied and objected to, for this to-wit:

(a) In April, 1965, the Monroe City School Board set the opening of the 1965-66 school year as August 30, 1965, and publicized such fact by all available news media in the area.

(b) Cooper v. Aaron cited by Plaintiffs-Appellants justifies objections of Defendants-Appellees as there exist relevent factors (excluding hostility to racial desegration) for Appellees to be heard either by the District Court or this Honorable Court, before irreparable damage and injury are done to an entire community and educational system of a large area, primarilly because pleaders have not made proper investigation nor inquiries, and because all of them, save one, know nothing of the relevant factors or anything else about the educational system, people nor economic conditions of this area, all of which can be shown to this Honorable Court, or any other court, if given the opportunity, and this does not include "administrative difficulties" nor a "recalcitrant school board" as alleged by Appellants; and further object to apparent reflection on the District Court, wherein as in truth the proposed order submitted to the District Court by Plaintiffs was for the purpose of enjoining the sale of $6,000,000 capital improvement bonds, if true copies of same were furnished by Appellants to Appellees.

9.

Paragraph 9 of Appellants' Motion is denied and objected to on the ground that it assumes a defense for Appellee which is not true, and until given an opportunity to present the truth to this Honorable Court, or any other judicial forum, will really cause irreparable injury to an entire community and area, and to the educational process of all students in the area.

Further, objection is made because Appellants speak of "good faith", and yet do not give Appellees an opportunity to present anything to any court on which a finding of good or bad faith can be made; and, further object because Appellants are by their own actions denying to Appellees the provisions of the Civil Rights Act of 1964; and, further Appellees oppose because not one of them is interested in, nor defending on, the ground of "administrative mechanics", nor any other similar technicality, and, if given the opportunity or right can clearly demonstrate the soundness of its position, plan and good faith.

10.

Appellees object to the allegations in Paragraph 10 for the reason that the premises therein are false, and there exists evidence to the contrary, if Appellees are given the opportunity to introduce same, and which will convince this Honorable Court, and any other judicial forum, that the position of the Appellees is not only tenable, and feasible but entirely within the framework of law, including the Civil Rights Act of 1964; further object to Appellants' allegations because the Appellants themselves, and all others like them, and all students in the educational system in this area, will suffer irreparable damage if the bond issue is not delivered and sold on the date now fixed, the best bid having been accepted on August 9, 1965, all of which can be conclusively shown to this Honorable Court, or any other judicial forum, if opportunity is granted.

II.

Appellees further answering this Motion respectfully show that the interests of justice and equity will best be served, including that of these Appellants and others like them, if a hearing by this Honorable Court, or any other judicial forum, is permitted at any date or hour in the near future; and, Appellees allege that such hearing is entirely within the spirit of the Civil Rights Act of 1964, especially those provisions cited supra.

WHEREFORE, Appellees oppose the Motion of Appellants for the reasons set forth herein and pray this Honorable Court that:

(a) The Motion be denied and dismissed at Appellants costs.

(b) In the alternative, and alternative only, should (a) be refused, that Appellants be required to furnish adequate bond to cover any damages suffered by Appellees in not being allowed to deliver and sell the $6,000,000 capital improvement bond issue, including architects and engineers fees, already and to be incurred, and all other losses possible in higher rates of interest, and additional legal and advertising costs, all being a direct burden on the taxpayers of the City of Monroe, Louisiana.

(c) Further, in the alternative, and alternative only, should (a) be refused then that a date and hour be set before this Honorable Court for a hearing on the opposition that Appellees might demonstrate that they are in Court "with clean hands", and that irreparable injury and damage will be done all parties directly and indirectly concerned, if prayers of Appellant are allowed.

(d) Further prays for all general and equitable relief in the premises.

ALBIE P. LASSITER,
DISTRICT ATTORNEY,
COURTHOUSE BUILDING,
MONROE, LOUISIANA.

CERTIFICATE

This will certify that a copy of this Opposition to Motion was placed in the United States Mail, bearing sufficient postage, addressed to the following counsel for Appellants:

(1) Robert F. Collins,
Attorney-at-Law,
2211 Dryades Street,
New Orleans, Louisiana .

(2) Jesse N. Stone, Jr.,
Attorney-at-Law,
854½ Texas Avenue,
Shreveport, Louisiana.

(3) James Sharp, Jr.,
Attorney-at-Law,
P. O. Box 271,
Monroe, Louisiana .

(4) Haskell A. Kassler,
Attorney-at-Law,
One State Street,
Boston, Massachusetts.

(5) Carl Rachlin, ✓
Attorney-at-Law,
38 Park Row,
New York 38, New York.

(6) Alvin J. Bronstein,
Attorney-at-Law,
603 North Farish Street,
Jackson, Mississippi.

Done this _____ day of August, 1965.

____
ALBIN P. LASSITER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Copy

JIMMY ANDREWS BY HIS MOTHER AND NEXT FRIEND, ETTA MAE ANDREWS: AND TOMMY RAY ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ODELL WILLIS, AND ALL NEGRO STUDENTS AND PARENTS SIMILARLY SITUATED,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W. L. HOWARD, MAYOR, J. H. SCOGIN, JR., PRESIDENT OF MONROE CITY SCHOOL BOARD, F. C. BREESE, JR., L. S. DANIEL, W. S. CONNAWAY, BILLY HARGISS, MEMBERS THEREOF, AND VAN D. ODOM, SUPERINTENDENT,

Defendants.

CIVIL ACTION

NO. 11297

ANSWER

Now into Court through undersigned counsel come MONROE CITY SCHOOL BOARD, J. H. SCOGIN, JR., President of Monroe City School Board, and VAN D. ODOM, Superintendent, made Defendants herein, and being the only Defendants named who were served and in answer to the complaint, with respect, aver that:

1.

Paragraph 1 is admitted except that it is affirmatively alleged that U.S.C.A. sub-chapter IV, Title 42:2000c and its subparts is the governing law relative to "public education".

2.

Paragraph 2 of Plaintiffs' complaint is denied.

3.

Paragraph 3 of Plaintiffs' complaint is denied.

4.

Paragraph 4 of Plaintiffs' complaint is denied.

5.

Paragraph 5 of Plaintiffs' complaint is denied.

6.

Further answering Plaintiffs' complaint, Defendants now show that the Defendants are ready and willing to comply with any reasonable orders of this Court, after full hearing had and all circumstances and benefits of such law have been applied.

7.

Further answering Plaintiffs' complaint, Defendants show that the allegations of the complaint if allowed to stand will cause irreparable and immediate damage and injury to the Plaintiffs themselves and all other persons in the Monroe City School District, as will appear on the trial hereof.

WHEREFORE, Defendants pray that after due proceedings had and hearing held in this entire matter before this Honorable Court that the proper order be entered after all circumstances and conditions are shown in the hearing to the satisfaction of this Honorable Court; and further pray for all general and equitable relief in the premises.

ALBIN P. LASSITER
ATTORNEY-AT-LAW
OUACHITA PARISH COURT HOUSE
MONROE, LOUISIANA

CERTIFICATE

This will certify that on this date a copy of this answer was placed in the United States Mail addressed to the following attorneys of record for the Plaintiffs, to-wit:

Jesse N. Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
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Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

Haynes Harkey, Jr.
Attorney-at-Law
1504 Stubbs Avenue
Monroe, Louisiana

Monroe, Louisiana, this 27th day of August, 1965.

ALBIN P. LASSITER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER AND NEXT FRIEND, ETTA MAE ANDREWS, AND TOMMY RAY ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ODELL WILLIS, AND ALL NEGRO STUDENTS AND PARENTS SIMILARLY SITUATED,

Plaintiffs

VS.

CITY OF MONROE, LOUISIANA, W. L. HOWARD, MAYOR; MONROE CITY SCHOOL BOARD, J. H. SCOGIN, JR., PRESIDENT, F. C. BREESE, JR., L. S. DANIEL, W. S. GANNAWAY, BILLY HARGISS, MEMBERS THEREOF, AND VAN D. ODOM, SUPERINTENDENT,

Defendants

CIVIL ACTION

NO. 11,297

ANSWER OF CITY OF MONROE AND W. L. HOWARD

NOW INTO COURT, through undersigned counsel come CITY OF MONROE, LOUISIANA, and W. L. HOWARD, Mayor, made defendants in the above styled and numbered cause, and for answer to plaintiffs' complaint, with respect represent :

1.

The plaintiffs in this cause seek two-fold injunctive relief, the substance of such relief being as follows:

(a) An injunction restraining and enjoining defendants from doing certain acts in furtherance of the operation of a biracial school system, hereinafter sometimes referred to as the "desegregation question," and

(b) An injunction restraining and enjoining defendants from delivering $6,000,000.00 of School Bonds authorized at a taxpayer's election on April 13, 1965, and sold on August 10, 1965, and from the acceptance and distribution of the proceeds thereof--until such time as the defendants submit a plan for the desegregation of the public school system, hereinafter sometimes referred to as the "School Bond Issue question."

2.

The allegations of plaintiffs' complaint relating to the desegregation question require no answer from these two defendants for the reason that the City of Monroe does not, either through its Commission Council or through its Mayor, govern, administer, manage or control the public school system of the City of Monroe nor is the Mayor of the City of Monroe an ex-officio member of the Monroe City School Board. On the contrary, under the Charter of the City of Monroe (Section 9, paragraph 3 of Act 47 of 1900, as amended by Act 320 of 1948) the government, administration and control of the Monroe City School is vested in the Monroe City School Board, a public body composed of five persons duly elected to serve thereon. However, insofar as such allegations may require an answer from these two defendants, the responses and answers of the Monroe City School Board, heretofore filed in these proceedings, are adopted and made the responses and answers of these defendants by reference.

3.

The relief sought on the School Bond Issue question should be denied for the following reasons:

(a) The City of Monroe, through its Commission Council, has authority to issue bonds for the purpose of "constructing and improving school houses and acquiring the necessary equipment and furnishings therefor" (La. Constitution, Art. 14, Section 14, and La. Rev. Statutes, Title 39, Section 551) and is charged with the responsibility of levying and collecting taxes for the payment of the principal and interest thereon as it becomes due (La. Constitution, Art. 14, Section 14, and La. Rev. Statutes, Title 39, Section 569). Pursuant to said authority and upon request from the Monroe City School Board, the Commission Council called an election in the City of Monroe to be held on April 13, 1965, at which election the qualified property taxpayers of the City of Monroe voted overwhelmingly in favor of the following proposition:

> "Shall the City of Monroe, Louisiana, incur debt and issue bonds to the amount of Six Million and No/100 Dollars ($6,000,000.00), to run twenty-five (25) years from the date thereof, with interest at a rate not exceeding five percent (5%) per annum, for the purpose of constructing and improving school houses and acquiring the necessary equipment and furnishings therefor in and for said City, title to which shall be in the public?"

Pursuant to the mandate from said property taxpayers, the City of Monroe, through its Commission Council, offered the said bonds for sale on August 10, 1965, at which time a syndicate headed by First National City Bank, New York, New York, and Scharff and Jones, New Orleans, Louisiana, made the highest and best bid, its bid resulting in an average interest rate of 3.6922 percent. Such bid was considered reasonable, and, accordingly, the same was accepted at the meeting of the Commission Council which was held on August 10, 1965. The City of Monroe proposes to deliver said bonds to the purchasers and to receive the proceeds therefrom not later than sixty (60) days following the date of the sale.

(b) The statutory period for challenging the validity of the calling of the bond election and the legality of the bond issue authorized thereat has elapsed /La. Constitution, Art. 14, Section 14(n) and La. Rev. Statutes, Title 39, Section 518/ and the same has not been challenged or set aside by suit or otherwise. The validity of said proceedings is now conclusive, and may not now be challenged by these plaintiffs. The steps being taken by the City of Monroe in delivering the same to the purchasers thereof and in receiving the proceeds therefrom are merely ministerial acts in furtherance of the mandate of the electorate granted at the election held on April 13, 1965, and the same should not now be restrained or enjoined.

(c) The proposition voted upon by the electorate at the election held on April 13, 1965, does not, in fact, require or by implication direct that the proceeds from the sale of the bonds be used for any illegal purpose or in any illegal manner, and, in particular, the same does not authorize or direct the City of Monroe School Board to expend the funds for the operation of a segregated school system. The question of whether the City of Monroe should now deliver the bonds and receive the proceeds therefrom is, therefore, not germane to the question of the desegregation of the public schools of the City of Monroe, and the same should not be restrained or enjoined.

(d) No irreparable injury can result to these plaintiffs, or the class of persons whom they represent, by the delivery of the bonds and the receipt of the proceeds thereof by the City of Monroe. On the contrary, great and irreparable injury and harm may result to these plaintiffs and the class of persons whom they represent as well as to all of the citizens and taxpayers of the City of Monroe if the delivery of the bonds is not consummated. Not only will there be additional costs of readvertisement and printing of the bonds, but also there is the probability that rising interest rates and rising construction costs will have to be borne. All of these practical considerations are in addition to the intangible damages which result to the school system as a whole from the delay in providing much needed additional classroom facilities. For this reason the performance by the City of Monroe of the ministerial function of delivering the said bonds and the receipt of the proceeds therefrom should not be restrained or enjoined.

4.

Alternatively, and only in the event that this action prevents the delivery of the bonds authorized at the election held on April 13, 1965, defendants aver that their rights to recover such damages from plaintiffs and/or their attorneys, as may result therefrom, including without limitation, costs of readvertisement and printing of bonds, increased interest rates and increased construction costs, be reserved to them.

WHEREFORE, defendants pray that the complaints of plaintiffs be dismissed at their costs.

ALTERNATIVELY, defendants pray that in the event that this action prevents the delivery of the bonds authorized at the election on April 13, 1965, their rights to recover such damages from plaintiffs and/or their attorneys as may result therefrom, including without limitation, costs of readvertisement and printing of bonds, increased interest rates and increased construction costs, be reserved to them.

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W. F. PIPES, JR.
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HAROLD B. JUDELL
FOLEY, JUDELL AND MOREL
225 BARONNE STREET
NEW ORLEANS, LOUISIANA

BY:______________________________
ATTORNEYS FOR CITY OF
MONROE AND W. L. HOWARD, MAYOR.

CERTIFICATE

I certify that a copy of the above and foregoing opposition to plaintiffs' Motion for injunctive relief, pending appeal, has been mailed to the following Counsel of record:

1. Jesse N. Stone, Jr.
   854½ Texas Avenue
   Shreveport, Louisiana.

2. Robert F. Collins, Esq.
   Niles R. Douglas, Esq.
   Lolis E. Elie, Esq.
   2211 Dryades Street
   New Orleans, Louisiana.

3. James Sharp, Jr.
   P. O. Box 271
   105 N. 23rd Street
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4. Carl Rachlin, Esq.
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5. Alvin J. Bronstein, Esq.
   603 N. Parish Street
   Jackson, Mississippi.

6. Stanley E. Tolliver, Esq.
   Carmack Building
   Quincy Street
   Cleveland, Ohio.

7. Malcolm Farmer, III
   2200 Industrial Bank Bldg.
   Providence, Rhode Island.

8. Albin P. Lassiter
   District Attorney
   City of Monroe
   Ouachita Parish Courthouse
   Monroe, Louisiana.

MONROE, LOUISIANA, this 31st day of August, 1965.

HAYNES L. HARKEY, JR.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER AND NEXT FRIEND, ETTA MAE ANDREWS; AND TOMMY RAY ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ODELL WILLIS, AND ALL NEGRO STUDENTS AND PARENTS SIMILARLY SITUATED,

Plaintiffs

CIVIL ACTION

NO. 11297

vs.

CITY OF MONROE, LOUISIANA, W. L. HOWARD, MAYOR, J. H. SCOGIN, JR., PRESIDENT OF MONROE CITY SCHOOL BOARD, F. C. BREESE, JR., L. S. DANIEL, W. S. CONNAWAY, BILLY HARGISS, MEMBERS THEREOF, AND VAN D. ODOM, SUPERINTENDENT,

Defendants.

AMENDED AND SUPPLEMENTAL ANSWER

Now, into Court, through undersigned counsel, come Monroe City School Board, J. H. Scogin, Jr., President of Monroe City School Board, and Van D. Odom, Superintendent, made Defendants herein, having previously filed an answer to the allegations of the Complaint, now file this amended and supplemental answer, to-wit:

1.

Reaffirming its previous answer, Defendants now affirmatively allege that the Complainants and their attorneys are attempting to obstruct the sale and delivery of bonds in the sum of $6,000,000 for the sole purpose of forcing the Defendants to comply with other demands in the Complaint without compliance with fundamental principles of law, and knowing full well that they have no legal right of any nature to enforce such demands, and have to date delayed the hearing on this matter by an attempted appeal to the Fifth Circuit Court of

Appeals, which was denied by the Court, all for the sole purpose of causing injury and damages to Defendants.

2.

Attached hereto is photostatic copy of New York Times, Sunday, August 15, 1965, wherein "Carl Rachlin, chief counsel for the Congress of Racial Equality" verifies the allegations in Paragraph One, supra.

3.

Defendants allege that this suit is delaying, and may prevent entirely the delivery of the bonds, and in such event Defendants, especially the Monroe City School Board, will suffer damages, expenses and costs from the actions of these Complainants and the attorneys representing them and the Congress of Racial Equality, and, therefore, Defendants are entitled to reserve all rights and actions against these Complainants and all attorneys in this suit, the Congress of Racial Equality, and all others party to this suit, for any damages, expenses, costs, or losses caused by this illegal procedure.

WHEREFORE, Defendants pray this amended and supplemental answer be allowed filed, and that all the rights and actions of these Defendants be reserved, and in no manner waived, against these Complainants, the attorneys of record representing them, Congress of Racial Equality, and all others party to this suit, for any damages, expenses, costs or losses caused by this illegal action of obstructing the sale and delivery of the $6,000,000 bond issue; and for general and equitable relief in the premises.

ALBIN P. LASSITER
DISTRICT ATTORNEY
OUACHITA PARISH COURTHOUSE
MONROE, LOUISIANA

ORDER

LET this Amended and Supplemental Answer be filed.

September 10, 1965.

UNITED STATES DISTRICT JUDGE

CERTIFICATE

This will certify that on this date a copy of this Amended and Supplemental Answer was placed in the United States Mail addressed to the following attorneys of record for the Plaintiffs, to-wit:

Jesse N. Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

James Sharp, Jr., Esq.
P. O. Box 271
105 N. 23rd Street
Monroe, Louisiana

Alvin J. Bronstein
603 N. Farish Street
Jackson, Mississippi

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
2211 Dryads Street
New Orleans, Louisiana

Carl Rachlin
38 Park Row
New York 38, New York

Stanley E. Tolliver
Carmack Building
Quincy Street
Cleveland, Ohio

Haynes Harkey, Jr.
Attorney-at-Law
1504 Stubbs Avenue
Monroe, Louisiana

Monroe, Louisiana, this 10th day of September, 1965.

ALBIN P. LASSITER

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF LOUISIANA

P. O. BOX 106
SHREVEPORT, LA. 71102

September 10, 1965

Mr. Jesse N. Stone, Jr.
Attorney at Law
854½ Texas Avenue
Shreveport, Louisiana

Messrs. Collins, Douglas & Elie
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

Mr. James Sharp, Jr.
Attorney at Law
P. O. Box 271
Monroe, Louisiana

Mr. Carl Rachlin
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38 Park Row
New York 38, New York

Mr. Alvin J. Bronstein
Attorney at Law
603 N. Parish Street
Jackson, Mississippi

Mr. Jack P. F. Gremillion
Attorney General of the
State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

Mr. Stanley E. Tolliver
Attorney at Law
Carmack Bldg., Quincy Street
Cleveland, Ohio

Mr. Malcolm Farmer, III
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2200 Industrial Bank Building
Providence, Rhode Island

Mr. Albin P. Lassiter
District Attorney
Fourth Judicial District
Ouachita Parish Courthouse
Monroe, Louisiana

Messrs. Hayes, Harkey & Smith
Attorneys at Law
1504 Stubbs Avenue
Monroe, Louisiana

Messrs. Pipes & Pipes
Attorneys at Law
316 South Grand Street
Monroe, Louisiana

Messrs. Foley, Judell & Morel
Attorneys at Law
225 Baronne Street
New Orleans, Louisiana

Gentlemen:

IN RE: Civil Action No. 11,297-M
Jimmy Andrews; et al vs.
City of Monroe, La.; et al

Judge Ben C. Dawkins, Jr. has this date directed this office to notify you that the above captioned matter has been fixed for trial on plaintiffs' application for preliminary injunction at Monroe, Louisiana, on Friday, September 17, 1965, at 9:30 A. M.

Yours very truly,

ALTON L. CURTIS, CLERK

By

Deputy Clerk

TWT:oam

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

JIMMY ANDREWS, ET AL.

vs. No. 11,297

CITY OF MONROE, ET AL.

STIPULATION

MR. HARKEY: On behalf of the City of Monroe as a defendant, and the Mayor of the City of Monroe, it is stipulated that the Mayor will not interfere with the decree of this Court and, further, the Commission Council of the City of Monroe, as the governing authority of the City and the issuing authority of these bonds will, upon delivery of the bonds, deliver the proceeds thereof to the Monroe City School Board.

MR. RACHLIN: Based upon the stipulation offered by counsel, we will agree to the release of the Mayor and the Commission Council as party defendants in this case.

It is hereby stipulated by and between the parties hereto and their respective counsel that the plan of desegregation of schools of the defendant is to be submitted within thirty (30) days from the date hereof and to be effective as of mid-term school year 1965-66 and shall provide for at least desegregation of four grades the first year, including the first, second and eleventh and twelfth grades, and that the plan shall further provide that desegregation of all twelve grades shall be completed not later than the opening of schools in September, 1968;

That counsel for the School Board reserve the right to file alternative plans within the prescribed period, or at any time prior to the effective date of January, 1966, provided the same does not delay the initiation of the plan of desegregation.

In accordance with this stipulation, counsel for plaintiffs consent to the dismissal of that part of the action which relates to any restraint upon the six million dollar bond issue of the City of Monroe and the Monroe City School Board, authorized in the election held on April 13, 1965.

SIDNEY YOUNG, Official Reporter,
United States District Court

September 17, 1965.

/ F

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JIMMY ANDREWS, ET AL.,
Appellants,

VS. NO. ___________

J. H. SCOGIN, JR., PRESIDENT OF
MONROE CITY SCHOOL BOARD, ET AL.
Appellees

OPPOSITION TO MOTION FOR INJUNCTIVE RELIEF PENDING APPEAL

NOW INTO COURT COME CITY OF MONROE and W. L. HOWARD, Mayor, designated Appellees in the above styled and numbered cause pending before this Court, and for their opposition to Appellants' Motion for injunctive relief, pending appeal, respectfully represent that:

A.

Appellants seek (pending an appeal which they have sought to take) injunctive relief against appearers, CITY OF MONROE and W. L. HOWARD, Mayor, and against their co-defendants, MONROE CITY SCHOOL BOARD, its President, its members and its superintendent - the substance of such injunctive relief being two-fold, as follows:

(1) Requiring and ordering appearers and their co-defendants to desegregate the public schools of the City of Monroe upon such terms and conditions as the Fifth Circuit Court of Appeals sets forth - until such time as the appeal which they seek is decided upon its merits.

(2) Enjoining and restraining appearers and their co-defendants from delivering $6,000,000.00 of School Bonds authorized at a taxpayers' election on April 13,

1965 and sold on August 10, 1965, and from the acceptance and distribution of the proceeds thereof - until such time as the appeal which they seek is decided upon its merits.

B.

Pretermitting the factual and legal questions raised by appellants concerning whether Monroe City School Board is operating the Monroe City School System in accordance with law and the mandates of the Courts, which questions are answered by co-defendants and appellees in a separate motion filed co-incidentally herewith, appearers aver:

(1) The injunctive relief, pending appeal, requiring and ordering the desegregation of the public schools of the City of Monroe on or before September 7, 1965 should not be granted as to these two appearers (City of Monroe and W. L. Howard, Mayor) because the City of Monroe does not, either through its Commission Council or through its Mayor, govern, administer, manage or control the public school system of the City of Monroe. On the contrary, under the Charter of the City of Monroe (Section 9, Paragraph 3 of Act 47 of 1900, as amended by Act 320 of 1948) the government, administration and control of the Monroe City Schools is vested in the Monroe City School Board.

(2) The injunctive relief, pending appeal, enjoining and restraining the appearers and their co-defendants from delivering the $6,000,000.00 of School Bonds authorized at the taxpayers' election on April 13, 1965 and sold on August 10, 1965, and from accepting and distributing the proceeds thereof should not be granted for the following reasons:

(a) The City of Monroe, through its Commission Council, does have authority to issue bonds for the purpose of "constructing and improving schoolhouses and acquiring the necessary equipment and furnishings therefor" (Louisiana Constitution, Art. XIV., Section 14 and Louisiana Revised Statutes, Title 39, Section 551) and is charged with the responsibility of levying and collecting taxes for the payment of the principal and interest thereon as it becomes due (Louisiana Constitution, Article XIV., Section 14 and Louisiana Revised Statutes, Title 39, Section 569). Pursuant to said authority and upon request from the Monroe City School Board, the Commission Council called an election in the City of Monroe to be held on April 13, 1965 at which election the qualified property taxpayers of the City of Monroe voted overwhelmingly in favor of the following Proposition:

> "Shall the City of Monroe, Louisiana, incur debt and issue bonds to the amount of Six Million Dollars ($6,000,000.00), to run twenty-five (25) years from the date thereof, with interest at a rate not exceeding five percentum (5%) per annum, for the purpose of constructing and improving schoolhouses and acquiring the necessary equipment and furnishings therefor in and for said City, title to which shall be in the public?"

Pursuant to the mandate from said property taxpayers the City of Monroe, through its Commission Council, offered the said Bonds for sale on August 10, 1965, at which time a syndicate headed by First National City Bank, New York, New York, and Scharff & Jones, New Orleans, Louisiana, made the highest and best bid, its bid resulting in an average interest rate of 3.6922 percent. Such bid was considered reasonable, and, accordingly, the same was accepted at the meeting which was held on August 10, 1965. The City of Monroe proposes to deliver said Bonds to the purchasers and to receive the proceeds therefrom not later than Sixty (60) days following the date of the sale.

(b) The statutory period for challenging the validity of the calling of the Bond election and the legality of the Bond Issue authorized thereat has elapsed (Louisiana Constitution, Art. XIV., Section 14[n] and Louisiana Revised Statutes, Title 39, Section 518), and the same has not been challenged or set aside by suit or otherwise. The validity of said proceedings is now conclusive, and may not now be challenged by these plaintiffs. The steps being taken by the City of Monroe in delivering the same to the purchasers thereof and in receiving the proceeds therefrom are merely ministerial acts in furtherance of the mandate of the electorate granted at the election held on April 13, 1965, and the same should not now be restrained or enjoined.

(c) The Proposition voted upon by the electorate at the election held on April 13, 1965 does not, in fact, or by implication direct that the proceeds from the sale of the Bonds be used for any illegal purpose or in any illegal manner, and, in particular, the same does not authorize or direct that the City of Monroe School Board expend the funds for the operation of a segregated school system. The question of whether the City of Monroe should now deliver the Bonds and receive the proceeds therefrom is, therefore, not germane to the issue of the desegregation of the public schools of the City of Monroe, and the same should not be restrained or enjoined.

(d) No irreparable injury can result to these plaintiffs, or the class of persons which they represent, by the delivery of the Bonds and the receipt of the proceeds thereof by the City of Monroe. On the contrary, great and irreparable injury and harm may result to these plaintiffs and the class of persons which they represent as well as to all of the citizens and taxpayers of the City of Monroe if the delivery of the Bonds is not consummated. Not only will there be additional costs of readvertisement and printing of the Bonds, but also there is the probability that rising interest rates and rising construction costs will have to be borne. All of these practical considerations are in addition to the intangible damages which will result to the school system as a whole from the delay in providing much needed additional classroom facilities. For this reason the performance by the City of Monroe of the ministerial function of delivering the said Bonds and the receipt of the proceeds therefrom should not be restrained or enjoined.

WHEREFORE, appearers, CITY OF MONROE and W. L. HOWARD, Mayor, pray that:

(1) Plaintiffs' prayer for injunctive relief, pending appeal, be dismissed.

(2) Alternatively, if any injunctive relief be granted or any other order be issued by this Court pursuant to plaintiffs' petition that the City of Monroe and W. L. Howard, Mayor, be expressly eliminated therefrom, and that the right of the City of Monroe to perform its ministerial function in delivering the $6,000,000.00 of Bonds sold on August 10, 1965

and the receipt of the proceeds therefrom be expressly reserved to it.

(3) Such further orders and decrees be entered herein as justice and equity may require.

HAYNES L. HARKEY, JR.
HAYES, HARKEY & SMITH
1504 STUBBS AVENUE
MONROE, LOUISIANA.

W. F. PIPES, JR.
PIPES AND PIPES
316 SOUTH GRAND STREET
MONROE, LOUISIANA.

BY:________________________
ATTORNEYS FOR CITY OF
MONROE AND W. L. HOWARD,
MAYOR.

CERTIFICATE

I certify that a copy of the above and foregoing opposition to plaintiffs' Motion for injunctive relief, pending appeal, has been mailed to the following Counsel of record:

1. Jesse N. Stone, Jr.
   854½ Texas Avenue
   Shreveport, Louisiana.
2. Robert F. Collins, Esq.
   Niles R. Douglas, Esq.
   Lolis E. Elie, Esq.
   2211 Dryades Street
   New Orleans, Louisiana.
3. James Sharp, Jr., Esq.
   P. O. Box 271
   105 N. 23rd Street
   Monroe, Louisiana.
4. Carl Rachlin, Esq.
   38 Park Row
   New York 38, New York
5. Alvin J. Bronstein, Esq.
   603 N. Parish Street
   Jackson, Mississippi.
6. Stanley E. Tolliver, Esq.
   Carmack Building
   Quincy Street
   Cleveland, Ohio.
7. Malcolm Farmer, III.
   2200 Industrial Bank Bldg.
   Providence, Rhode Island.

MONROE, LOUISIANA, this _____ day of _________, 1965.

____
HAYNES L. HARKEY, JR.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

JIMMY ANDREWS, ET AL.

vs. No. 11,297

CITY OF MONROE, ET AL.

STIPULATION

MR. HARKEY: On behalf of the City of Monroe as a defendant, and the Mayor of the City of Monroe, it is stipulated that the Mayor will not interfere with the decree of this Court and, further, the Commission Council of the City of Monroe, as the governing authority of the City and the issuing authority of these bonds will, upon delivery of the bonds, deliver the proceeds thereof to the Monroe City School Board.

MR. RACHLIN: Based upon the stipulation offered by counsel, we will agree to the release of the Mayor and the Commission Council as party defendants in this case.

It is hereby stipulated by and between the parties hereto and their respective counsel that the plan of desegregation of schools of the defendant is to be submitted within thirty (30) days from the date hereof and to be effective as of mid-term school year 1965-66 and shall provide for at least desegregation of four grades the first year, including the first, second and eleventh and twelfth grades, and that the plan shall further provide that desegregation of all twelve grades shall be completed not later than the opening of schools in September, 1968;

That counsel for the School Board reserve the right to file alternative plans within the prescribed period, or at any time prior to the effective date of January, 1966, provided the same does not delay the initiation of the plan of desegregation.

In accordance with this stipulation, counsel for plaintiffs consent to the dismissal of that part of the action which relates to any restraint upon the six million dollar bond issue of the City of Monroe and the Monroe City School Board, authorized in the election held on April 13, 1965.

SIDNEY YOUNG, Official Reporter,
United States District Court

September 17, 1965.

deadline
Nov. 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE ANDREWS,
AND TOMMY RAY ROBINSON, BY HIS
MOTHER AND NEXT FRIEND, ODELL
WILLIS, AND ALL NEGRO STUDENTS AND
PARENTS SIMILARLY SITUATED,

Plaintiffs

VS.

CIVIL ACTION
NO. 11,297

CITY OF MONROE, LOUISIANA, W. L.
HOWARD, MAYOR, MONROE CITY SCHOOL
BOARD, J. H. COLGIN, JR., PRESIDENT,
F. C. BREESE, JR., L. S. DANIEL, W. S.
CARRAWAY, BILLY HARGISS, MEMBERS
THEREOF, AND VAN D. ODOM, SUPERINTENDENT,

Defendants

PROPOSED PLAN FOR DESEGREGATION

Pursuant to the decree of this Honorable Court, filed September 17, 1965, the undersigned respectfully present this proposed plan for desegregation of the Monroe City School System:

1.

Grades One, Two, Eleven and Twelve of all schools will be desegregated beginning at the mid-term semester of the school year 1965-66, with proper notice to interested persons.

2.

Initial or new pupil assignments will be made on written application of the parents or legal guardians of students. Application forms will be made available to all persons desiring them, at the School Board Office, 2101 Roselawn, City of Monroe, Louisiana. Such applications must be filed with the School Board at least 15 days prior to beginning of the mid-term semester. Complete instructions will be made available to interested parents or legal guardians.

3.

Transfer pupil assignments will be governed by the same rules as set out in Paragraph 2 for initial or new students.

4.

Assignments of students will not be denied because of race, religion or national origin.

5.

The applications of new or transfer students will, however, be subject to the following reasonable factors:

(a) The desires and wishes of the parents or legal guardians will be given great weight.

(b) The age of the pupil must be compared with the ages of pupils attending the class or grade to which assignment or transfer is requested.

(c) The availability of requested or necessary or desired courses of study, for ultimate graduation.

(d) Availability of classroom space or other physical facilities existing at time of application.

(e) Assignment or transfer must be made on the basis of the school nearest the applicant's residence, unless determined by the Board that unusual circumstances exist making it more expedient for the welfare of the pupil.

(f) Assignment or transfer request and application must be the choice of the parents or legal guardians.

(g) Technical errors or omissions in application forms will not be considered as a ground for denial.

(h) After the beginning of a school semester any transfer must be with the approval of the Board, and under no conditions, unless unusual and especial circumstances can be proven by the applicant, will a transfer be allowed.

(i) All applicants for assignment or transfer must be notified in writing of the action of the Board not later than 8 days after filing of completed application.

(j) The sex of the pupil may be considered by the Board in assignment and transfers, where unusual circumstances exist.

(k) These factors must apply equally to white and Negro students.

(l) Assignments and transfers must be in accord with all reasonable procedural requirements that have been in existence prior hereto, or that may be adopted and promulgated in the future.

6.

Commencing with mid-term session of the school year 1966-67, grades Three and Four, Ninth and Tenth will be desegregated, with proper notice to interested persons.

7.

Beginning with the mid-term semester of the school year 1967-68, grades Seven and Eight will be desegregated, with proper notice to all interested persons.

8.

Beginning with the school year 1968-69, the remaining grades Five and Six will be desegregated, with proper notice to all interested parties.

9.

In the event the School Board determines at some later date that it is advisable to install all male or female schools such can be done, but not on the basis of race, religion or national origin.

10.

School districts may be formed to expedite transportation and to insure proper classroom space and facilities in the future, but not on the basis of race, religion or national origin.

11.

In the event any part or portion of this plan is held invalid for any reason, then, in that event the School Board reserves the right to file an alternate plan, and to comply with those parts or portions not declared invalid in the interim pending the court's action on the alternate plan.

12.

The School Board reserves the right to file alternate plan or plans prior to any date set herein for effectiveness of desegregation, should unforeseen circumstances exist at the time of filing alternate plan.

13.

The School Board reserves all rights and interests existing in equity or law should such unforeseen events occur during the enactment of this plan.

Respectfully submitted:

MONROE CITY SCHOOL BOARD;

BY:

W. S. [illegible], PRESIDENT

V. C. [illegible], VICE-PRESIDENT

L. S. [illegible], SECRETARY-TREASURER

BILLY [illegible], MEMBER

[illegible] HILL, MEMBER

[illegible] F. [illegible], DISTRICT ATTORNEY

CERTIFICATE

This will certify that on this date a copy of this Proposed Plan for Desegregation was placed in the United States Mail addressed to the following attorneys of record for the Plaintiffs, to-wit:

1. Jesse N. Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

2. Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
2211 Dryades Street
New Orleans, Louisiana

3. James Sharp, Jr.
P. O. Box 271
185 N. 23rd Street
Monroe, Louisiana

4. Carl Rachlin, Esq.
36 Park Row
New York 38, New York

5. Alvin J. Bronstein, Esq.
603 N. Parish Street
Jackson, Mississippi

6. Stanley E. Tolliver, Esq.
Cagnack Building
Quincy Street
Cleveland, Ohio

7. Malcolm Farmer, III
2206 Industrial Bank Bldg.
Providence, Rhode Island

Monroe, Louisiana, this _____ day of October, 1965.

ALBIN P. LASSITER

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF LOUISIANA

P. O. BOX 106
SHREVEPORT. LA. 71102

December 2, 1965

Mr. Jesse N. Stone, Jr.
Attorney at Law
854½ Texas Avenue
Shreveport, Louisiana

Messrs. Collins, Douglas & Elie
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

Mr. James Sharp, Jr.
Attorney at Law
P. O. Box 271
Monroe, Louisiana

Mr. Carl Rachlin ✓
Attorney at Law
38 Park Row
New York, New York

Mr. Alvin J. Bronstein
Attorney at Law
603 N. Farish Street
Jackson, Mississippi

Mr. Stanley E. Tolliver
Attorney at Law
Carmack Building
Cleveland, Ohio

Mr. Malcolm Farmer, III
Attorney at Law
2200 Industrial Bank Bldg.
Providence, Rhode Island

Mr. Albin P. Lassiter, Dist. Atty.
Fourth Judicial District
Ouachita Parish Courthouse
Monroe, Louisiana

Messrs. Hayes, Harkey & Smith
Attorneys at Law
1504 Stubbs Avenue
Monroe, Louisiana

Messrs. Pipes & Pipes
Attorneys at Law
316 South Grand Street
Monroe, Louisiana

Messrs. Foley, Judell & Morel
Attorneys at Law
225 Baronne Street
New Orleans, Louisiana

IN RE: Civil Action No. 11,297-M
Jimmy Andrews, etc. et al vs.
City of Monroe, et al.

Gentlemen:

This is to advise Motion filed on behalf of Monroe City School Board to amend order of Judge Ben C. Dawkins, Jr. of November 2, 1965 was presented to Judge Dawkins and he has denied same this date.

Yours very truly,

ALTON L. CURTIS, CLERK

BY: Norma Jean Jones
Deputy Clerk

njj

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

ANDREWS, et al
Plaintiffs-Appellants,

vs. CIVIL ACTION NO. 11 297

CITY OF MONROE, et al
Defendant-Appellees.

MOTION

Now, into Court, through undersigned counsel, and as individual members of the Monroe City School Board, comes the Monroe City School Board, respectfully moving this Honorable Court that:

1.

The ORDER ON PLAN FOR DESEGREGATION filed November 2, 1965, be amended to become effective with the fall term of school in September, 1966, for this, to-wit:

(a) On November 19, 1965, Plaintiffs filed notice of intent to appeal to the Fifth Circuit Court of Appeal on the grounds that their objections to the proposed plans were not considered by this Honorable Court, and in general to the entire Order of this Honorable Court, thus leaving the Mover in position of complying with an Order which is in no manner acceptable to Plaintiffs and thus allowing room for more and unnecessary disturbance in the school system should the Order be reversed or materially changed.

(b) Plaintiffs know that there exists in the City of Monroe another public school system, including a high school and many elementary schools, which system will not be affected by this Order at mid-term, January, 1966, and this condition of fact could well do irreparable damage to the Monroe City School system, and, in fact, could defeat the entire purpose of the Order.

WHEREFORE, Mover prays that after due consideration hereof that this Honorable Court amend its Order to become effective at the fall term of September, 1966, and for general and equitable relief in the premises.

MONROE CITY SCHOOL BOARD:

By: ______________________
W. S. Gannaway, President

____
F. C. Breese, Jr.,
Vice-President

____
L. S. Daniel, Secretary-Treasurer

____
Billy R. Hargiss, Member

____
Shelby Hill, Member

____
Albin P. Lassiter, District Attorney

CERTIFICATE

I hereby certify that a copy of this Motion was placed in the United States Mail, this date, addressed to:

Collins, Douglas & Elie
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

Alvin J. Bronstein
Attorney
603 North Farish Street
Jackson, Mississippi

Carl Rachlin
Attorney
38 Park Row
New York, New York

December 1, 1965.

____
Albin P. Lassiter, District Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE ANDREWS;
AND TOMMY RAY ROBINSON, BY HIS
MOTHER AND NEXT FRIEND, ODELL
WILLIS, AND ALL NEGRO STUDENTS AND
PARENTS SIMILARLY SITUATED,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W. L.
HOWARD, MAJOR; MONROE CITY SCHOOL
BOARD, J. H. SCOGIN, JR., PRESIDENT;
F. C. BREESE, JR., L. S. DANIEL, W. S.
GANNAWAY, BILLY HARGISS, MEMBERS
THEREOF, AND VAN D. ODOM, SUPERINTENDENT,

Defendants.

CIVIL ACTION
NO. 11297

ANSWER TO REQUEST FOR ADMISSIONS

Now, into Court through undersigned counsel come MONROE CITY SCHOOL BOARD, J. H. SCOGIN, JR., President, and VAN D. ODOM, Superintendent, and in answer to the Request for Admissions respectfully show that:

1. It is admitted that Plaintiff, Jimmy Andrews, is recorded in the records of the schools as having been born May 27, 1947.
2. It is admitted that Plaintiff, Tommy Ray Robinson, is recorded in the school records as having been born April 22, 1949.
3. through 8. inclusive are admitted.
9. through 13. are neither admitted nor denied for lack of knowledge.
14. The Plaintiffs, Jimmy Andrews and Tommy Ray Robinson, were enrolled in the public schools of Monroe, Louisiana, during the 1964-65 school year.
15. It is admitted that there are Negro students in the public schools of Monroe, Louisiana.

16. and 17. are denied for the reason that the Monroe City School System is a creature of the State of Louisiana and a separate and legal distinct entity and operates entirely within the framework of the acts passed by the state legislature.

18. Paragraph 18 is admitted.

19. Paragraph 19 is admitted except that the Mayor is not a member ex officio of the Monroe City School Board.

20. and 21. Paragraphs 20 and 21 are admitted.

22. Paragraph 22 is denied.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied for the reason that it is immaterial and irrelevant to the issues of this suit, and further, it is too broad to allow a specific answer.

25. Paragraph 25 is admitted.

26. and 27. Paragraphs 26 and 27 are denied as not being relevant or material to the suit.

28. and 29. Paragraphs 28 and 29 are admitted.

30. Paragraph 30 is denied for the reason that it is not relevant nor material to the suit.

31. Paragraph 31 is admitted, except that districts are involved also.

32. Paragraph 32 is denied for the reason that it is not relevant nor material to the issues of the suit.

33. and 34. Paragraphs 33 and 34 are denied.

35. Paragraph 35 is denied as each student is required to apply for admission to a designated school of their own choice.

36. Paragraph 36 is denied for the same reasons set forth in Paragraph 35.

37. and 38. Paragraphs 37 and 38 are denied for the reason that it is neither material nor relevant to the issues of the suit.

39. and 40. Paragraphs 39 and 40 are denied as not being material nor relevant to the suit and also too broad to allow a specific answer.

41. Paragraph 41 is denied for the reason that the official figures of the Monroe School System for the year 1964-65 are available.

42. through 46. Paragraphs 42 through 46 are admitted.

47. Paragraph 47 is denied.

48. Paragraph 48 is denied for the reason that it is neither relevant nor material to the issues of this suit.

49. Paragraph 49 is denied for the reason that the Plaintiffs have never made application to attend any school other than the ones in which they are now registered, nor has any member of the Negro race to this date made application to attend any school other than the school to which they have been assigned.

50. Paragraph 50 is denied for the reason that it is too broad, to allow specific answer, and further, for the reason that it is immaterial and irrelevant to the issues involved in this suit.

51. Paragraph 51 is denied for the reason that it is too broad and further, that it is not material nor relevant to the issues involved.

52. Paragraph 52 is denied for the reason that it is a question of law and in many instances the 1964 Civil Rights Act seems to have overruled and reversed certain parts of such case.

53. through 55. Paragraphs 53 through 55 are denied for the reason that they are immaterial and irrelevant.

56. Paragraph 56 is denied for the reason that all records are kept primarily for the benefit of the students and for statistical purposes.

ALBIN P. LASSITER,
DISTRICT ATTORNEY,
COURTHOUSE BUILDING,
MONROE, LOUISIANA.

CERTIFICATE

This will certify that a copy of this Answer to Request for Admissions was placed in the United States Mail, bearing sufficient postage, addressed to the following counsel for Plaintiffs:

(1) Robert F. Collins
Attorney at Law
2211 Dryades Street
New Orleans, Louisiana

(2) Jesse M. Stone, Jr.
Attorney at Law
854½ Texas Avenue
Shreveport, Louisiana

(2) James Sharp, Jr.
Attorney at Law
P. O. Box 271
Monroe, Louisiana

(4) Haskell A. Kassler
Attorney at Law
One State Street
Boston, Massachusetts

(5) Carl Rachlin
Attorney at Law
38 Park Row
New York 38, New York

(6) Alvin J. Bronstein
Attorney at Law
603 North Farish Street
Jackson, Mississippi

(7) Haynes L. Harkey, Jr.
Attorney at Law
1504 Stubbs Avenue
Monroe, Louisiana

3

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 23,253

JIMMY ANDREWS, ET AL.,
Appellant,

versus

CITY OF MONROE, LOUISIANA, ET AL.,
Appellee.

On Appeal from the United States District Court for the Western District of Louisiana.

APPLICATION FOR REHEARING ON BEHALF OF MONROE CITY SCHOOL BOARD, AND ITS MEMBERS, AND VAN D. ODOM, SUPERINTENDENT.

ALBIN P. LASSITER,
District Attorney,
Monroe, Louisiana,
Attorney for Appellees.

MONTGOMERY & CO., "THE BRIEF SPECIALISTS", 1107 POYDRAS ST., N. O., LA.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 23,253

JIMMY ANDREWS, ET AL.,
Appellant,
versus
CITY OF MONROE, LOUISIANA, ET AL.,
Appellee.

On Appeal from the United States District Court for the Western District of Louisiana.

APPLICATION FOR REHEARING WITH EN BANC COURT

The Monroe City School Board having been aggrieved by the Order of this Court, dated December 29, 1966, vacating the order of the district court and remanding the case to the district court to meet the standards established in the case of *Linda Stout v. Jefferson County Board of Education,* decided on the same date, moves this Honorable Court to grant a rehearing before the Court En Banc, and assigns as special errors the following:

1.

The *Jefferson* case does not apply to Applicant in that defendants in the *Jefferson* case were shown to be accept-

Federal funds and thus governed by Title VI of the
l Rights Act of 1964, whereas Applicant is not in
class.

2.

The *Jefferson* case does not apply to Applicant because
Civil Rights Act of 1964 specifically establishes that
Department of Health, Education and Welfare has
sdiction over a school system when it is accepting
eral funds, or agrees voluntarily, which Applicant has
done.

3.

The *Jefferson* case holds that all employees of HEW
experts in all phases of education by virtue of their
loyment.

4.

The *Jefferson* case holds that while HEW guidelines
not in themselves binding on the district courts that
courts must use the same standards as set out in the
lelines.

5.

Jefferson case does not take into consideration that
er of district court in this case was based, as a stand-
the HEW guidelines in effect at time of issuance;
, in effect holds that each time HEW issues new guide-
s, the district court must change its existing orders,
ther or not the district court agrees with such changes
whether or not such order will cause harm in a given
a.

6.

Jefferson case holds that in all things, under the guise
ntegration, HEW may exercise authority that must

supersede the legal authority of the State Board of Education and more especially the local elected Board of Applicant.

7.

Jefferson case holds that true "freedom of choice" of the individual must fall, whereas this Court, and the Supreme Court, hold in criminal cases that the rights of the individual must be given prime importance.

8.

Jefferson case holds that Applicant must force both negro and white children to attend schools of its choosing in order to have active integration, apparently to the extent of using law enforcement officers.

9.

Jefferson case avoids the definition of "Desegregation" as appears in the Civil Rights Act of 1964 (U.S.C.A. Title 42, Section 2000(c)(b)), when it orders integration of the faculty and staff, whether or not agreed to by teacher; and in this respect voids the State Teachers' Tenure Act.

10.

Jefferson case holds that local school board must assume the responsibility for enforcing the decree of the Court, while reserving the real authority to enforce to HEW.

11.

Jefferson case holds that school boards must speed up integration and in no manner rely on the *Briggs* case, while large portions of the opinion is explaining why the courts through the years have followed the *Briggs* case, especially on question of desegregation as against forced integration.

12.

Jefferson case holds that race is relevant to HEW to
ulate imbalance in face of prohibition of 1964 Civil
hts Act.

13.

Jefferson case holds that in de facto segregation "The
uations have some similarity but they have different
gins, create different problems, and require different
rective action," and then in effect force all standards
HEW guidelines on all situations, at the same time ad-
ting that the Congress has not passed a "necessary com-
hensive statute."

14.

Jefferson case holds that present HEW guidelines are
isistent with courts' decisions, and by inference and di-
t order to district court approves all future guidelines
omulgated by HEW without knowing whether they will
nply with Act of Congress or courts' decisions.

15.

Jefferson case holds that faculty must be integrated
gardless of any Teacher Tenure Act, thus holding any
h state act is in conflict with the law of the land and
constitutional if a teacher or school board complies with
te act in forcing integration in respective schools.

PRAYER AND CONCLUSION

Applicant prays that, after due deliberation, this
norable Court grant a rehearing before the Court En
nc due to the comprehensive, sweeping and all inclusive
ect of this Opinion on all states of the Union, especially
its legislative effect, apparently contrary to the Civil
hts Act of 1964.

In conclusion, since the *Jefferson* case has been applied to Applicant's case by adoption, Applicant respectfully suggests that in event defendants directly in the *Jefferson* case, especially Louisiana school boards, apply for rehearing that for purposes of brief and argument that these cases be consolidated for the convenience of the Court and Applicants.

Respectfully,

ALBIN P. LASSITER,
District Attorney,
Courthouse Building,
Monroe, Louisiana.

CERTIFICATE

I hereby certify that a copy of this brief has been placed in the U. S. Mail, postage prepaid, addressed to:

Robert F. Collins,
Attorney at Law,
2211 Dryades Street,
New Orleans, Louisiana

and

Carl Rachlin,
38 Park Row,
New York, N. Y. 10038.

January ...., 1967.

ALBIN P. LASSITER

LOUISIANA

IN THE

United States Court of Appeals

FIFTH CIRCUIT

No. 23,253

JIMMY ANDREWS, ET AL.,
Appellant,

versus

CITY OF MONROE, LOUISIANA, ET AL.,
Appellee.

On Appeal from the United States District Court for the Western District of Louisiana.

BRIEF FOR MONROE CITY SCHOOL BOARD.

ALBIN P. LASSITER,
District Attorney,
Monroe, Louisiana,
Attorney for Appellees.

MONTGOMERY & CO., "THE BRIEF SPECIALISTS", 1107 POYDRAS ST., N. O., LA.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 23,253

JIMMY ANDREWS, ET AL.,
Appellant,
versus
CITY OF MONROE, LOUISIANA, ET AL.,
Appellee.

On Appeal from the United States District Court for the Western District of Louisiana.

BRIEF FOR MONROE CITY SCHOOL BOARD.

May It Please the Court:

FOREWORD

This brief will endeavor to discuss only the points peculiar to the position of the Monroe City School Board, allowing others to elucidate on general matters decided in the Jefferson case. We sincerely feel that in law the Monroe City School Board is different from the general classification of the schools receiving Federal Funds. The Monroe City School Board accepts no Federal Funds over which HEW or Commissioner of Education has jurisdiction.

In our application we listed fifteen (15) special errors.

We shall discuss only a few of these, and by reference adopt the arguments of other defendants, as they may apply.

1.

"The Jefferson case does not apply to Applicant in that Defendants in the Jefferson case were shown to be accepting Federal Funds and thus governed by Title VI of the Civil Rights Act of 1964, whereas Applicant is not in that class."

2.

"The Jefferson case does not apply to Applicant because the Civil Rights Act of 1964 specifically establishes that the Department of Health, Education and Welfare has jurisdiction over a school system when it is accepting Federal Funds, or agrees voluntarily, which Applicant has not done."

ARGUMENT ON 1 AND 2.

The Monroe City School Board has never accepted any HEW money, nor does it expect to do so. We point out that U.S.C.A. 42:2000c, being the Public Education part of the Civil Rights Act of 1964, designates the Commissioner of Education as the official having any authority under this Act. It will be noted that his duties, responsibilities and authority are specifically limited by Congress. He must make a survey and report to the President under 2000c-1. Under 2000c-2 we read: "The Commissioner is authorized, **upon application of any school board,** state, municipality, school district, or other governmental unit legally responsible for operating a public school or schools to render technical assistance to **such applicant,** etc., etc." Then he is allowed to set up training institutes and make grants for inservice training. By what authority does he act **to force** guidelines on anybody, even if they apply for technical assistance? Can this be the reason he is seeking judicial sanction, when he failed to get Congressional approval?

U.S.C.A. 42:2000d, subsections 1 through 4, usually referred to as Title VI, does not authorize the Commissioner to enforce guidelines.

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity **receiving Federal financial assistance."** (42 U.S.C.A. 2000d-1) (emphasis ours).

The other portions of Title VI set out the machinery for cutting off or denying Federal funds, and allows "Each Federal department and agency which is empowered to extend Federal financial assistance, etc." to issue regulations and rules "to effectuate the provisions of Section 2000d." Such rules, regulations or orders, however, must be approved by the President. We find nothing in the record to show that the President has approved the "guidelines" which HEW wants this Court to adopt as "minimum" standards. Could it be, again, that the Commissioner knows that the President will not approve his orders and wants this Court to override the President? If not, why hasn't the Commissioner followed the will of Congress?

The Monroe City School Board has followed the orders of the District Court, and will continue to do so. It does not receive any money from HEW. Why should it be placed under the jurisdiction of HEW, when Congress by its own Act forbids HEW to interfere? The District Court has its contempt powers and many others to enforce its decrees, which are far more effective than threatening to cut off money that isn't there in the first place.

We respectfully submit that HEW guidelines are illegal in every respect, if any effect is to be given the Act of Congress, and especially in the case of the Monroe City School Board.

8.

"Jefferson case holds that Applicant must force both negro and white children to attend schools of its choosing in order to have active integration, apparently to the extent of using law enforcement officers."

ARGUMENT

This case says that forced integration not desegregation by freedom of choice is the national policy, and therefore the law of the land. (The opinion does not clarify who sets "national policy," when an Act of Congress apparently does not.)

This seems erroneous when at least four (4) Circuit Courts of Appeals have held to the contrary, namely, Sixth, Seventh, Eighth and Tenth Circuits.

One of the most recent such cases was decided by the Sixth Circuit, and made no distinction between de facto and de jure. This is the case of *Deal v. Cincinnati*, 369 Fed. 2nd 55, decided on December 6, 1966, with Chief Justice Weick as organ of the Court. The Eighth Circuit has apparently on December 15, 1966, come to the same conclusion in the case of *Clark v. Little Rock*, although the opinion has not as of this date been printed to our knowledge.

The arguments by other defendants about the Jefferson opinion being contrary to the prohibition in the 1964 Civil Rights Act to correct imbalance seems valid. On the other hand, the Jefferson opinion goes far afield and quotes newspapers, etc., which are not in the record, to justify, in the minds of the framers, at least, the most unusual results. A hint, however, seems to be given on page 115 of the printed opinion when it says, in part, "or some other acceptable substitute, perhaps aided by an educational park." The Commissioner of Education in his pamphlet "The Human Frontier," based on talks made in May and June, 1966, says:

> "We should for example alter political boundaries to bring social, economical and intellectual strength of the suburbs to bear on the problems of the City Schools. Building programs for the future should be planned so that new schools would break up, rather than continue, segregation of both the racial and economic sort, and, if I have my way, the office will provide construction funds before long. We have recently been considering financial support for a comprehensive study of a system of education parks. We visualize each of the centralized school complexes as educational centers that should provide classes ranging from pre-kindergarten through Junior College. **While such a park would deny the neighborhood school, it would express the cultural mix that every vigorous city exemplifies."** (Emphasis ours.)

In a speech before the Law School of New York University in February, 1965, Hon. J. Skelly Wright said, "Public school authorities must be cured of the neighborhood school syndrome."

We quote these distinguished men to show that Civil Rights and racial questions are sometimes used in dangerous ways to gain ends having nothing to do with either.

Certainly this Court wants nothing to do with matters not contemplated by Congress in its Act of 1964.

We respectfully submit that if "freedom of choice" does not work, we cannot place this country in the position of forcing its children to become engineers when they want to study medicine or law.

9.

"Jefferson case avoids the definition of "Desegregation" as appears in the Civil Rights Act of 1964 (U.S.C.A. Title 42, Section 2000(c) (b)), when it orders integration of the faculty and staff, whether or not agreed to by teacher; and in this respect voids the State Teachers' Tenure Act."

ARGUMENT

"'Desegregation' means the assignment of students to public schools, etc." These are the exact words of Congress. We make bad jokes about the mentality of Congress, but we assure you that there is not a member of the Congress who does not know that the word "students" does not include faculty and staff. The Jefferson case has legislated an entirely new meaning to a word commonly known in all walks of life. If the Congress had intended desegregation of faculties and staff they would have so stated in no uncertain terms. Congress has the means of holding hearings to determine the effect of its laws on people and the future. If this change is to be made, we respectfully submit that Congress should do it.

10.

"Jefferson case holds that local school board must assume the responsibility for enforcing the decree of the Court, while reserving the real authority to enforce to HEW."

ARGUMENT

The Jefferson case says in no uncertain terms that the school board is responsible for all facets of forced integration and must make it work. On the other hand the opinion says the District Court must force the school board to use HEW guidelines, present and future. Responsibility without authority adds up to an exact zero. The word "guidelines" is a misnomer. It means "rules, regulations or orders" as stated in Title VI, especially with the sanction of the judiciary.

There is nothing in the record of any case before this Court that HEW has consulted any local or state official about drafting these so-called "guidelines." The very wording proves that no practical person or a person of practical experience in education had anything to do with the drafting of guidelines.

We respectfully submit that a District Judge is more competent to handle local matters in any state of the Union than a person far away in an ivory tower with no practical experience.

CONCLUSION

We have not labored any question, but our sincerity of purpose, together with briefs of the other defendants, should be sufficient for the Court to place the law governing education of our children on a more solid foundation than the present holding in the Jefferson case.

Respectfully,

ALBIN P. LASSITER,
District Attorney,
Courthouse Building,
Monroe, Louisiana.

CERTIFICATE

I hereby certify that a copy of this brief has been placed in the U. S. Mail, postage prepaid, addressed to:

Robert F. Collins,
Attorney at Law,
2211 Dryades Street,
New Orleans, Louisiana.

and

Carl Rachlin,
38 Park Row,
New York, N. Y. 10038.

February ...., 1967.

....
ALBIN P. LASSITER

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

August 16, 1965

Mr. Robert F. Collins
Attorney at Law
2211 Dryades Street
New Orleans, Louisiana

Re: No. 22892 - Jimmy Andrews, et al
-vs- J. H. Scogin, President
Monroe City School Board

Dear Sir:

I am authorized by this court to advise that your Motion for Injunctive Relief Pending Appeal was received and filed this 16th day of August, 1965, and under the rules and practice of this Court will be presented for ruling without oral argument on or about August 19, 1965*, together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,
Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/bwc
cc: Mr. Jesse N. Stone, Jr.
Mr. James Sharp, Jr.
Mr. Haskell A. Kassler
Mr. Carl Rachlin
Mr. Alvin J. Bronstein
Hon. Jack P. F. Gremillion
Mr. J. H. Scogin
Mr. Van D. Odom

* This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

Moore pc. case

August 19, 1965

Alvin Bronstein, Esq.
LCDC
603 N. Parish Street
Jackson, Mississippi

Dear Al:

Enclosed is a copy of my letter to Howard Moore and Benjamin Smith which speaks for itself.

At your earliest convenience can you send us a set of the Bogalusa injunction papers? We do not seem to have them here. At this moment they could be very useful for some other problems that are arising in the north.

With regard to Mark Howe's comments we are going over those and in a day or two we will write to you concerning them. Preliminarily the differences are easily resolved.

I received your letter with regard to Stephen Miller, Larry Goldstein, and David Cleverdon. The reason I had written to you was, toward the end of July I had been served, through the mail, with a copy of the Fifth Circuit notice that these three cases were on the docket. Unfortunately, I do not know why they were sent to me. We do not have a record of the cases. I thought perhaps you did know something about it. Perhaps we ought to check with one of the other lawyers in Jackson, such as Young or Rosenthal and find out who is the attorney of record in these cases and see what is being done.

I also received in today's mail a rather mysterious document from the Fifth Circuit which I do not understand. It was regarding the so-called

Cont'd.....

appeal in Andrews v. City of Monroe and frankly I do not understand what that was all about. I trust you will advise me accordingly.

With kindest regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc. 1

AUG 26 1965

LAW OFFICES
HAYES, HARKEY AND SMITH
1504 STUBBS AVENUE, P. O. DRAWER 1791
MONROE, LOUISIANA 71203

THOMAS M. HAYES, JR.
HAYNES L. HARKEY, JR.
LOUIS D. SMITH
ROGER H. SILVER, JR.

TELEPHONE 322-1432
AREA CODE 318

August 23, 1965

Mr. Edward W. Wadsworth
Clerk, United States Court of Appeals
Fifth Circuit
Room 408,
400 Royal Street
New Orleans, Louisiana.

IN RE: Jimmy Andrews, Et Al
Vs. J. H. Scogin, Jr., Et Al.
No. 22,892

Dear Mr. Wadsworth:

This is to confirm our telephone conversation of this date.

I did not know until I received a copy of the letter, dated August 20, 1965, addressed to you by Collins, Douglas & Elie, that a Motion signed by the plaintiffs in the lawsuit, had been filed in these proceedings. It is my understanding that you will send me a copy of this Motion so that I may examine it.

With kindest regards, I am,

Yours truly,

HAYES, HARKEY & SMITH

BY: ORIGINAL SIGNED BY
H. L. HARKEY, JR.

HLH;JR.:EPS

CC: Jesse N. Stone, Jr.
Robert F. Collins, Esq.
Niles R. Douglas, Esq.
Lolis E. Elie, Esq.
James Sharp, Jr., Esq. ← COPY FOR
Carl Rachlin, Esq.
Alvin J. Bronstein, Esq.
Stanley E. Tolliver, Esq.
Malcolm Farmer, III.
Albin P. Lassiter

AUG 27 1965

LAW OFFICES
HAYES, HARKEY AND SMITH
1504 STUBBS AVENUE, P. O. DRAWER 1791
MONROE, LOUISIANA 71203

THOMAS M. HAYES, JR.
HAYNES L. HARKEY, JR.
LOUIS D. SMITH
ROGER H. SILVER, JR.

TELEPHONE 322-1432
AREA CODE 318

August 24, 1965

Mr. Edward W. Wadsworth
Clerk, United States Court of Appeals
Fifth Circuit
Room 408
400 Royal Street
New Orleans, Louisiana.

IN RE: Jimmy Andrews, Et Al
Vs. J. H. Scogin, Jr., Et Al
No. 22,892.

Dear Mr. Wadsworth:

Thank you very much for sending me the copies of the Motion to Dismiss filed on behalf of the plaintiffs in the above styled matter.

5411 524-8788

Mr. Harold B. Judell, Foley, Judell & Morel, 225 Baronne Street, New Orleans, Louisiana, is associated with Mr. Pipes and myself as Attorneys for the City of Monroe and for W. L. Howard, Mayor. Please enroll Mr. Judell as one of the Attorneys of record for said defendants, and I will appreciate it if you will see that copies of all future notices from the Court are sent to him as well as to Mr. Pipes and myself.

I am sending copies of this letter to all other Counsel of record in the case and by such copies I am requesting that they, likewise, mail copies of all documents, pleadings and notices to Mr. Judell as well as to Mr. Pipes and myself.

With kindest regards, I am,

Yours truly,

HAYES, HARKEY & SMITH

BY: H. L. Harkey Jr.

HLH;JR.:EPS

CC: Jesse N. Stone, Jr.
Robert F. Collins, Esq.
Niles R. Douglas, Esq.
Lolis E. Elie, Esq.
James Sharp, Jr., Esq.
Carl Rachlin, Esq. COPY FOR
Alvin J. Bronstein, Esq.
Stanley E. Tolliver, Esq.
Malcolm Farmer, III.
Albin P. Lassiter
Harold B. Judell
W. F. Pipes, Jr.

must
be filed
Nov. 6

October 22, 1965

Harris David, Esq.
c/o Collins, Douglas & Elies, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

Thank you for your letter of the 18, concerning Claibourne Parish. Your suggestion is a good one about attempting to get an injunction under 28 U.S.C. 1651.

We have just received a proposed plan in the City of Monroe case which I have not yet been able to analyze. I assume you also have a copy since Collins, Douglas & Elie are referred to as one of the counsel in the case. I will be in touch with you very shortly on our suggestions in this regard. Superficially, it appears to be very similar to the Jackson Parish case. By the way, is the Billy Hargiss, who is a member of the Monroe City School Board, the reactionary radio minister?

You will hear from us shortly.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

October 28, 1965

Hon. Ben C. Dawkins
United States District Judge
for the Western District of Louisiana
Monroe Division
Monroe, Louisiana

RE: ANDREWS, ET. AL. v. CITY OF MONROE, ET. AL.

Dear Judge Dawkins:

Enclosed please find an original and one copy of the objections to the proposed plan for desegregation filed by the defendants herein.

I hereby certify that a copy of these objections have been, this date, mailed to the Hon. A. P. Lassiter, District Attorney on behalf of the defendants herein, to his office in Monroe, Louisiana.

Very truly yours,

CARL RACHLIN
General Counsel

CR/cs
Encs.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

NOV 2 8 1965

November 19, 1965

Carl Rachlin, Esq.
38 Park Row
New York, New York

Dear Carl:

The appeals have not been docketed since the cases have not been sent up from the District Court. They will be sent up next week.

I am preparing the papers for the Monroe appeal. The motion to consolidate has been prepared and will be filed when the cases are finally docketed.

Please excuse my late reply, but I just returned from New Jersey.

Best wishes,

COLLINS, DOUGLAS & ELIE

BY: Harris David
HARRIS DAVID

HD/ew

P.S. I assume someone filed the brief in Louisiana v. Paget and Flowers. It was due November 11, 1965.

uisiana---in case the story
eats up.

[1965]

How... ...an
Bishop ... Walls
Goodwin Watson
Joseph Willen
Jerry Wurf
Charles S. Zimmerman

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general counsel
James McCain
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Marvin Rich
community relations director

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Wall Street Journal HA23115

re Monroe.

Monroe
School
Board

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
EDWARD W. WADSWORTH
Clerk
OFFICE OF THE CLERK
RM. 408- 400Royal St.
New Orleans, La.

February 10, 1966

Mr. Robert F. Collins
Attorney at Law
2211 Dryades Street
New Orleans, Louisiana

No. 23173 - Margaret M. Johnson, et al
-vs- Jackson Parish School Board, et al
Re: No. 23192 - Yvornia Decarol Banks, et al
-vs- Claiborne Parish School Board, et al
No. 23253 - Jimmy Andrews, et al - vs- City of Monroe, Louisiana, et al.

Dear Sir:

I am authorized by this court to advise that your Motion to Consolidate was received and filed this 10th day of February 1966, and under the rules and practice of this Court will be presented for ruling without oral argument on or about February 25, 1966*, together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

/bwc
cc: Mr. Carl Rachlin
Mr. Alvin J. Bronstein
Mr. Harris David
Mr. Fred L. Jackson
Mr. William F. Pipes, Jr.
Mr. Albin P. Lassiter
Mr. Harold B. Juddell
Hon. Jack P.F. Gremillion
Mr. William H. Baker

WILLIAM Q. KEENAN
219 EAST 42ND STREET
NEW YORK, N. Y. 10017

FEB 17 1966

February 16, 1966

Stephen M. Nagler, Esq.
Congress on Racial Equality
38 Park Row
New York 38, N. Y.

Re: Andrews v. Monroe No. 11297

Dear Steve:

I have reviewed the balance of the file you sent me, i.e., that portion concerning the above captioned proceeding and find the following documents missing:

(1) The complaint.

(2) The first amended complaint.

(3) Order allowing the first and second amended complaint.

(4) Motion for injunction in the Fifth Circuit, Docket 22892.

(5) Motion for injunction, if any, in the trial court.

(6) The trial court's order denying the injunction.

(7) Transcript of the hearing on the complaint including the testimony of witnesses.

(8) The court's decree.

(9) The desegregation plan filed pursuant to the decree.

(10) Plaintiffs' objections to the desegregation plan.

(11) Transcript of hearing, if any, on the objections.

(12) The trial court's decree responsive to the objections.

(13) Any opinions of the court.

(14) Notice of appeal.

(15) Designation of record on appeal.

Steve, I really can't start to write a brief on these cases until I have some idea of what the court below did. Please get me the court decree, the desegregation plans, the objections and the court opinions as quickly as you can. Please let me know what arrangements are in progress for printing the record.

Yours very truly,

W. Q. Keenan
William Q. Keenan

WQK:lm

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LAW DEPARTMENT

MAY 5 1966

May 4, 1966

Carl Rachlin, Esq.
38 Park Row
New York, N. Y.

Andrews v. Monroe -- et al.

Dear Carl,

I return your papers in the above herewith, along with the four copies of the brief that are left after serving everyone, including our friends.

I find I am scheduled to speak in Chicago May 25th at 9:00 a.m. If the argument schedule in Andrews v. Monroe allows argument for plaintiff on May 24th in New Orleans, and if you have use for me, I would find it a great honor to participate. If, however, this does not work out to be convenient and strategic, I shall be disappointed but not in the slightest put out. In the final analysis our common concern is the welfare of the Negro youngsters in Louisiana. To whatever extent we are permitted to help them we are fortunate and the job -- any portion of it -- that we are allowed to perform brings with it its own complete reward. The truth is that by helping them we are helping ourselves and our own children by making our society better to live in.

I know you are terribly busy, but I want to impose on you to ask that you do your best to determine and decide what further part you want me to play as soon as possible, because I do a better job if I have time to think about it and to prepare.

With cordial regard,

Yours very truly,

Bill Keenan

William Q. Keenan

REA EXPRESS is the new name for the complete domestic and international surface and air services of Railway Express Agency

APR 13 1967

January 20, 1967

Edward W. Wadsworth, Esq.
Clerk, United States
Court of Appeals, Fifth Circuit
Room 408-400 Royal Street
New Orleans, Louisiana 70130

Re: Jimmie Andrews v.
City of Monroe, La. 23253

Dear Sir:

This will acknowledge your notices of December 29, 1966 and January 17, 1967. The first forwarded the Court's opinion advising that the above captioned appeal was remanded for further consideration in light of United States Linda Stout v. Jefferson County Board of Education. Can you forward a copy of the Court's opinion in Jefferson? I make the request because, of course, it is not possible to understand the nature of the order of remand without access to the reference case. If there is a fee for this service could you bill me at the above address?

Your second notice advises that the appellees in the above captioned appeal have been granted an extension of time to petition rehearing until seven days after the issuance of the printed opinion. I was not aware that such a request for extension of time had been filed with the court. Can you advise me your best estimate as to when a printed opinion will issue in the above captioned appeal?

Yours very truly,

William Q. Keenan
Attorney for Appellants
219 East 42 Street
New York 10017 N. Y.

CC: Alvin J. Bronstein, Esq.
Carl Rachlin, Esq.

WQK/gh

DUPLICATED RECORD

IN THE

UNITED STATES

COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23253

JIMMY ANDREWS, ET AL,

Appellants,

versus

CITY OF MONROE, LOUISIANA, ET AL,

Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

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COLLINS, DOUGLAS & ELIE
Attorneys & Counsellors At Law
201 Douglas Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

(Filed: Jan. 13, 1966)

Robert F. Collins
Nils R. Douglas
Lolis E. Elie

Telephone
523-5197

January 6, 1966

Clerk
United States Court of Appeals
For the Fifth Circuit
400 Royal Street
New Orleans, Louisiana

Re: Andrews v. City of Monroe, et al
No. 23253

Dear Sir:

Please print the entire record in this case omitting the following pages:

9 - 30, inclusive
36 - 49, inclusive
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59 - 75, inclusive
76 - 81, inclusive
84 - 88, inclusive
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108 - 111, inclusive
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137'
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Respectfully submitted,

COLLINS, DOUGLAS & ELIE

BY: s/ Harris David

HD/vmg

...oOo...

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

(Filed: Aug. 5, 1965)

JIMMY ANDREWS BY HIS MOTHER AND NEXT FRIEND, ETTA MAE ANDREWS: AND TOMMY RAY ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ODELL WILLIS, AND ALL NEGRO STUDENTS AND PARENTS SIMILARLY SITUATED,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W. L. HOWARD, MAYOR J. H. SCOGIN, JR. PRESIDENT OF MONROE CITY SCHOOL BOARD, F. C. BREESE, JR. L. S. DANIEL, W. S. GONNAWAY, BILLY HARGISS, MEMBERS THEREOF, AND VAN D. ODOM, SUPERINTENDANT,

Defendants.

CIVIL ACTION

NO 11297

COMPLAINT

1. Jurisdiction

Jurisdiction is based on the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, Title 28 U.S. Code Section 1343 (3) and (4), and Title 42 U.S. Code Sections 1981, 1983, 1985, 1986, 1988.

2. Nature of Cause of Action

This is a class action on behalf of plaintiffs and all other Negroes similarly situated, for damages and for an Ex Parte Temporary Restraining Order, Preliminary and

T COURT
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(Filed: Aug. 5, 1965)

CIVIL ACTION
NO 11297

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Final Injunctions prohibiting the furtherance of a proposed City of Monroe School Bond Issue until defendants file with this court a fair and equitable plan for desegregation of the City of Monroe school district, and for the maintenance of the City of Monroe school system without regard to race, color, creed or national orgin, which plan shall be caused to go into effect no later than the opening of the next session of said school district. All of the other persons constitute a class too numerous to bring before the court. There are common questions of law and fact affecting all members of the class, and common relief is sought.

3. Plaintiffs

Minor and adult plaintiffs are Negro citizens of the United States, and of the State of Louisiana and are domiciled in the City of Monroe. Etta Mae Andrews is a taxpayer and Odell Willis is a registered voter and a taxpayer. Both of said plaintiffs are the mothers of children attending the Public Schools of the City of Monroe. All minor plaintiffs are attending the free, public schools of the City of Monroe, Louisiana. The remainder of the plaintiffs are citizens of the United States and the State of Louisiana, Negroes, minors, and adults, similarly situated and constitute a class so numerous as to make it impracticable to bring them all before the court. The rights sought to be enforced for them are several and there is a common question of law and fact affecting the several rights and common relief is sought.

4. Defendants

Defendant, City of Monroe, Louisiana, is a municipal corporation organized and existing under the laws of the State of Louisiana; defendant, W. L. Howard, is Mayor and Public Safety Commissioner of the City of Monroe and a member *ex officio* of the Monroe City School Board, defendant, J. H. Scogin, Jr., is the President of the Monroe City School Board; defendants, F.C. Breese, Jr., L. S. Daniel, W. S. Gonnaway, and Billy Hargissare the members of said School Board; defendant, Van D. Odom, is the Superintendant of the Monroe City school system. The City of Monroe is issuing the school bonds through or with the official aid of its Commission formulation of budgets, and the disbursement of school funds. Specifically, defendants construct elementary, junior high and high schools with reference to the maintenance of a compulsory biracial school system. Defendants herein also limit participation in extracurricular activities in the schools to one or the other race, separately.

6. The most recent official figures available to the plaintiffs herein indicate that there are 8 white

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schools with 3,307 white students in grades 1 to 6, 2 white schools with 875 white students in grades 7 and 8, 124 white teachers in grades 1 through 8, and 1 white school with 1,146 white students and 103 white teachers in grades 9 through 12.

7. The most recent official figures available to the plaintiffs herein indicate that there are 3 Negro schools with 3,173 Negro students in grades 1 through 5, 1 Negro school with 950 Negro students in grades 7 and 8, 106 Negro teachers in grades 1 through 8 and 1 Negro school with 1,228 Negro students and 89 Negro teachers in grades 9 through 12.

~~4229~~

545

10,90

8. April 13, 1965 a City Wide school bond issue of $6,000,000.00 was voted upon and approved by the property owners of said city. Bids on the bonds are scheduled to be submitted on August 10, 1965. Attached hereto and made part hereof is the prospectus and official statement concerning said bonds. The bonds are to be issued for the purpose of erecting and/or improving school houses, school equipment and furnishings therefor.

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9. Plaintiffs apprehend and fear that the funds to be secured by the bond issue will be used to perpetuate the discriminatory segregationist practices of the past.

10. Plaintiffs allege that the City of Monroe and

DUPLICATED RECORD

IN THE

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COURT OF APPEALS

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COLLINS, DOUGLAS & ELIE
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201 Douglas Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

(Filed: Jan. 13, 1966)

Robert F. Collins
Nils R. Douglas
Lolis E. Elie

Telephone
523-5197

January 6, 1966

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Respectfully submitted,

COLLINS, DOUGLAS & ELIE

BY: s/ Harris David

HD/vmg

...oOo...

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

(Filed: Aug. 5, 1965)

JIMMY ANDREWS BY HIS MOTHER AND NEXT FRIEND, ETTA MAE ANDREWS: AND TOMMY RAY ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ODELL WILLIS, AND ALL NEGRO STUDENTS AND PARENTS SIMILARLY SITUATED,

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, W. L. HOWARD, MAYOR J. H. SCOGIN, JR. PRESIDENT OF MONROE CITY SCHOOL BOARD, F. C. BREESE, JR. L. S. DANIEL, W. S. GONNAWAY, BILLY HARGISS, MEMBERS THEREOF, AND VAN D. ODOM, SUPERINTENDANT,

Defendants.

CIVIL ACTION

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2. Nature of Cause of Action

This is a class action on behalf of plaintiffs and all other Negroes similarly situated, for damages and for an Ex Parte Temporary Restraining Order, Preliminary and

Final Injunctions prohibiting the furtherance of a proposed City of Monroe School Bond Issue until defendants file with this court a fair and equitable plan for desegregation of the City of Monroe school district, and for the maintenance of the City of Monroe school system without regard to race, color, creed or national orgin, which plan shall be caused to go into effect no later than the opening of the next session of said school district. All of the other persons constitute a class too numerous to bring before the court. There are common questions of law and fact affecting all members of the class, and common relief is sought.

3. Plaintiffs

Minor and adult plaintiffs are Negro citizens of the United States, and of the State of Louisiana and are domiciled in the City of Monroe. Etta Mae Andrews is a taxpayer and Odell Willis is a registered voter and a taxpayer. Both of said plaintiffs are the mothers of children attending the Public Schools of the City of Monroe. All minor plaintiffs are attending the free, public schools of the City of Monroe, Louisiana. The remainder of the plaintiffs are citizens of the United States and the State of Louisiana, Negroes, minors, and adults, similarly situated and constitute a class so numerous as to make it impracticable to bring them all before the court. The rights sought to be enforced for them are several and there is a common question of law and fact affecting the several rights and common relief is sought.

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6. The most recent official figures available to the plaintiffs herein indicate that there are 8 white

schools with 3,307 white students in grades 1 to 6, 2 white schools with 875 white students in grades 7 and 8, 124 white teachers in grades 1 through 8, and 1 white school with 1,146 white students and 103 white teachers in grades 9 through 12.

7. The most recent official figures available to the plaintiffs herein indicate that there are 3 Negro schools with 3,173 Negro students in grades 1 ~~4229~~ through 5, 1 Negro school with 950 Negro students in grades 7 and 8, 106 Negro teachers in grades 1 through 8 and 1 Negro school with 1,228 Negro students and 89 5457 Negro teachers in grades 9 through 12. 10,909

8. April 13, 1965 a City Wide school bond issue of 5,29.30 $6,000,000.00 was voted upon and approved by the property owners of said city. Bids on the bonds are scheduled to be submitted on August 10, 1965. Attached hereto and made part hereof is the prospectus and official statement concerning said bonds. The bonds are to be issued for the purpose of erecting and/or improving school houses, school equipment and furnishings therefor.

9. Plaintiffs apprehend and fear that the funds to be secured by the bond issue will be used to perpetuate the discriminatory segregationist practices of the past.

10. Plaintiffs allege that the City of Monroe and

its School Board have an affirmative obligation and duty under the Constitution and laws of the United States and decisions thereunder to voluntarily desegregate said schools.

11. Plaintiffs allege that the failure of this school board or any school board to so voluntarily desegregate their schools is a denial of rights guaranteed under the due Council, School Board, Mayor and Secretary-Treasurer. The City of Monroe is sued in its capacity as a municipal corporation which owns and operates its own system of free public schools by and through the Monroe City School Board, which is charged by the laws of the State of Louisiana and, more particularly, by The Charter of said city with the government, control and administration of said school system and school funds. The above-mentioned individuals are sued in their official capacities.

5. Facts

Defendants, acting under color of the laws of Louisiana, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school system in the City of Monroe, Louisiana on a racially segregated basis. Defendants maintain and operate a compulsory biracial school system and defendants make initial assignments of students to the public schools under their control on the grounds of race and color. Principals, teachers and other professional personnel under defendants' jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated. Students assigned initially to elementary schools denominated as Negro, are thereafter assigned solely to junior high and/or high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as Negro nor are assignments of students, teachers, principals or other professional personnel of the Negro race assigned to schools designated as white. Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and also a violation of 42 U.S.C. 1981, 1983, 1988 (3), and 1986.

12. Plaintiffs and the members of the class which they represent are irreparably injured by the acts of defendants complained of herein. The continued operation by defendants of compulsory biracial school systems in the City of Monroe, Louisiana including the assignment

of pupils, teachers, principals and other administrative personnel on the ground of race, the operation of the budgets for the schools on the basis of race, the construction of schools on the basis of race, and the programming and planning of extracurricular activities on the basis of race violate the rights, of the plaintiffs and the members of the class, secured to them by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the United States Laws and decisions. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court. Any other relief to which plaintiffs and those similarly situated might be remitted would be attended by uncertainty and delay, would involve a multiplicity of suits, cause further irreparable injury and occasion vexation and inconvenience and deny to plaintiffs and those similarly situated substantial relief.

WHEREFORE, plaintiffs pray that the court sign an Ex Parte Temporary Restraining Order enjoining defendants, their agents, representatives, employees, successors and all persons in active concert with them from:

1.) Continuing to operate a compulsory biracial school system in the City of Monroe.

2.) Making initial assignments of pupils to the public schools of the City based on race.

3.) Assigning teachers, principals, and other professional personnel to the public schools on the basis of race.

4.) Approving employment contracts, budgets, and disbursing funds on the basis of race.

5.) Constructing elementary, junior high and high schools in the City on the basis of dual attendance areas based on race.

6.) Programming and supporting extracurricular activities which are limited solely to one or the other of the races.

7.) Continuing to make any other distinctions in the operation of the City schools which are based solely on race.

8.) Advertising or soliciting for bids, accepting bids, accepting funds, distributing funds, or doing or having done by others any act, furthering the proposed school bond issue approved by the voters on April 13, 1965.

Said Temporary Restraining Order to remain in effect until it expires or until defendants file with the court a fair and equitable plan for desegregation of said school district and maintenance of said desegregated school district, which plan shall go into effect no later than the opening of the next school session, to wit, the session commencing in August or September, 1965.

Plaintiffs further pray that the court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing that this Honorable Court enter Preliminary and Permanent Injunctions identical to that prayed for in the Temporary Restraining Order.

Plaintiffs further pray for a judgment against defendants in the sum of $15,000.00 for their damages plus attorneys fees, expenses and costs.

Plaintiffs further pray that if this court directs defendants to submit desegregation plans that the court will retain jurisdiction of this case pending court approval and full and complete implementation of defendants' plans.

Plaintiffs further pray that this court will grant such other, further, additional or alternative relief as may appear equitable, just, and proper.

Respectfully submitted,

s/ Jesse N. Stone, Jr.
Jesse N. Stone, Jr.,
854½ Texas Avenue
Shreveport, Louisiana

Robert F. Collins, Esq.
Niles R. Douglas, Esq.
Lolis E. Elie, Esq.
2211 Dryads Street
New Orleans, Louisiana
523-5197

James Sharp, Jr., Esq.
P. O. Box 271
105 N. 23rd Street
Monroe, Louisiana
323-8372

Of Counsel:

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38 Park Row
New York 38, New York

Alvin J.Bronstein
603 N. Farish Street
Jackson, Mississippi

Stanley E. Tolliver
Carmack Building
Quincy Street
Cleveland, Ohio

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

...oOo...

MOTION TO AMEND OR SUPPLEMENT COMPLAINT

(Number and title omitted) (Filed: August 9, 1965)

Now into court comes Jimmy Andrews, by his mother and next friend, Etta Mae Andrews, and Tommy Ray Robinson by his mother and next friend, O'Dell Willis, plaintiffs in the above entitled matter and ask leave of Court pursuant to rule 15 of the Federal Rules of Civil Procedure to Amend or supplement their complaint in the following respect:

1. That your plaintiffs' complaint be supplemented by the addition thereto of the verifications or affidavits of Etta Mae Andrews and O'Dell Willis.

WHEREOF, your plaintiffs pray that they be permitted to file said verifications or affidavits and to have the same considered as part of the complaint herein.

Respectfully submitted,

s/ Jesse N. Stone, Jr.
Jesse N. Stone, Jr.,
854½ Texas Avenue
Shreveport, Louisiana

Robert F. Collins, Esq.
Niles R. Douglas, Esq.
Lolis E. Elie, Esq.
2211 Dryads Street
New Orleans, Louisiana
523-5197

James Sharp, Jr., Esq.
P. O. Box 271
105 N. 23rd Street
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Of Counsel:

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38 Park Row
New York 38, New York

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603 N. Farish Street
Jackson, Mississippi

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Carmack Building
Quincy Street
Cleveland, Ohio

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

- - - - -

ORDER

Upon consideration of this foregoing motion, it is hereby ordered, adjudged and decreed that the above-mentioned affidavits or verifications are to be filed with the original complaint in Civil Action No. 11297, now pending in this court, and that said affidavits or verifications shall henceforth be considered a part of the complaint in said action.

Shreveport, La., August 9, 1965.

s/ Ben C. Dawkins, Jr.
United States District Judge

- - - - -

AFFIDAVIT

(Filed: August 9, 1965)

STATE OF LOUISIANA
OUACHITA PARISH
CITY OF MONROE

ODELL WILLIS, being duly sworn, deposes and says:

1. That I am a plaintiff in Civil Action No. 11297 now pending in This Court.

2. I am a Negro citizen of the United States, a resident of the City of Monroe, Parish of Ouachita, State of Louisiana, a taxpayer and a registered voter of said City, and the mother of Tommy Ray Robinson, a minor who attends a public school in the City of Monroe, Louisiana.

3. That I have read the complaint in Civil Action No. 11297 and know and understand the contents thereof and that all of the allegations therein contained are true and correct to the best of my knowledge.

Attest:
s/ Allen D. Evans
s/ Hellen O'Neal

s/ O'Dell Willis
August 5, 1965

Sworn to and subscribed before me

this ________day of August, 1965

____
Notary Public

My commission expires:

____

CADDO PARISH, STATE OF LOUISIANA

On this 6th day of August, 1965, before me, Jerome T. Powell, Notary, personally came Hellen O'Neal and Allen D. Evans both of whom, after being duly sworn, deposed and acknowledged to me, Notary that they actually saw Odell Willis sign the foregoing instrument.

s/ Hellen O'Neal
s/ Allen D. Evans

Sworn to and subscribed this 6th day of August, 1965.

s/ Jerome T. Powell
Notary Public

(Seal)

- - - - -

AFFIDAVIT

(Filed: Aug. 9, 1965)

STATE OF LOUISIANA
OUACHITA PARISH
CITY OF MONROE

ETTA MAE ANDREWS, being duly sworn, deposes and says:

1. That I am a plaintiff in Civil Action No. 11297 now pending in This Court.

2. I am a Negro citizen of the United States, a

resident of the City of Monroe, Parish of Ouachita, State of Louisiana, a taxpayer of said City, and the mother of Jimmy Andrews, a minor who attends a public school in the City of Monroe, Louisiana.

3. That I have read the complaint in Civil Action No. 11297 and know and understand the contents thereof and that all of the allegations therein contained are true and correct to the best of my knowledge.

Attest:

s/ Allen D. Evans　　　　s/ Mrs. Etta Mae Andrews
s/ Hellen O'Neal　　　　　August 5, 1965

Sworn to and subscribed before me
this ________day of August, 1965

____
Notary Public
My commission expires:

____
CADDO PARISH, STATE OF LOUISIANA

On this 6th day of August, 1965, before me, Jerome T. Powell, Notary, personally came Allen D. Evans and Hellen O'Neal both of whom, after being duly sworn, deposed and acknowledged to me, Notary, that they actually saw Etta Mae Andrews sign the foregoing instrument.

s/ Allen D. Evans
s/ Hellen O'Neal

Sworn to and subscribed this 6th day of August, 1965

s/ Jerome T. Powell
Notary Public
(Seal)

...oOo...

* * * * *

NOTE: PORTION OF RECORD OMITTED - FILED IN ITS ORIGINAL FORM

* * * * *

...oOo...

NOTICE OF APPEAL

(Number and title omitted) (Filed: August 16, 1965)

Notice is hereby given that the plaintiffs in the above-entitled cause appeal to the United States Court of Appeals for the Fifth Circuit under United States Code Title 28, Section 1292(1) from the refusal of the District Court of August 10, 1965, to grant the temporary restraining order and preliminary injunction prayed for.

August 13, 1965.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

Attorneys for Plaintiffs

By s/ Robert F. Collins

JESSE N. STONE, JR., ESQ.
854½ Texas Avenue
Shreveport, Louisiana

JAMES SHARP, JR., ESQ.
P. O. Box 271
105 North 23rd Street
Monroe, Louisiana
325-8372

Of Counsel:

HASKELL A. KASSLER, ESQ.
One State Street
Boston, Massachusetts

CARL RACHLIN
38 Park Row
New York 38, New York

ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi

...oOo...

REQUEST FOR ADMISSIONS UNDER RULE 36

(Number and title omitted) (Filed: August 17, 1965)

Plaintiffs request defendants within 13 days after mailing of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissability which may be interposed at the trial:

I. That each of the following statements are true.

1. Plaintiff Jimmy Andrews, is an infant.
2. Plaintiff Tommy Ray Robinson is an infant.
3. Plaintiff Etta Mae Andrews is an adult.
4. Plaintiff O'Dell Willis is an adult.
5. All the foregoing plaintiffs are Negro.
6. All the foregoing plaintiffs are citizens of the United States.
7. All the foregoing plaintiffs are citizens of the State of Louisiana.
8. All the foregoing plaintiffs are domiciled in the City of Monroe.
9. O'Dell Willis is a registered voter in Ouachita Parish.
10. O'Dell Willis is a taxpayer.
11. Etta Mae Andrews is a taxpayer.

12. Etta Mae Andrews is the mother of Jimmy Andrews.

13. O'Dell Willis is the mother of Tommy Ray Robinson.

14. The infant plaintiffs are students in the free public schools of Monroe, Louisiana.

15. There are in the free public schools of Monroe, Louisiana other infant Negro students.

16. Defendant Monroe City School Board (hereinafter referred to as Board.), is an unincorporated governmental agency of the City of Monroe.

17. Defendant Board is a governmental agency charged by the laws of Louisiana and by the Charter of the City of Monroe with the control and administration of the Monroe with the control and administration of the Monroe school system and its school funds.

18. Defendant Board is presently operating such system.

19. Defendant W. L. Howard is Mayor of the City of Monroe and a member ex officio of the Board.

20. Defendant J.H. Scogin, Jr., is the President of the Board.

21. Defendant Van D. Odom is Superintendent of the Monroe City School System.

22. The other named dfendants are members of the Board.

23. The City of Monroe is a municipal corporation which owns and operates its own system of free public schools.

24. No Negro child has ever been a student in the same school simultaneously with a white child or children in any school operated by Defendant Board or subject to its jurisdiction.

25. During the school semester which terminated in the Spring of 1965 no Negro child was a student simultaneously in any class in which a white child or children were students in any school operated by Defendant Board or subject to its jurisdiction.

26. No Negro Teacher has ever taught a class in which there was a white child or children in any school operated by or subject to the jurisdiction of Defendant Board.

27. During the school semester which ended in the Spring of 1965 no Negro teacher taught a white child or children in any school operated by or subject to the jurisdiction of Defendant Board.

28. The system of schools operated by Defendants consist of several schools located at public places within the City. Some of the said schools have only white pupils.

29. Some of the said schools have only Negro pupils.

30. No Negro teacher is employed to teach in any of the schools where only white children attend.

31. Students are initially assigned to a particular school by Defendant Board based in part upon the race or color of the student concerned.

32. Principals, teachers and other professional personnel are assigned to schools within the jurisdiction of Defendants on the basis of race or color among other considerations.

33. Certain schools under Defendants' jurisdiction are designated "white."

34. Certain schools under Defendants' jurisdiction are designated "Negro."

35. Students initially assigned to elementary schools designated as "white" are thereafter assigned to high schools similarly designated.

36. Students initially assigned to elementary schools designated as "Negro" are thereafter assigned to high schools similarly designated.

37. In no case are assignments of students, teachers, principals or other professional personnel of the white race made to schools designated as "Negro."

38. In no case are assignments of students, teachers, principals or other professional personnel of the Negro race made to schools designated as "white."

39. Defendants operate a program of extracurricular activities as part of or in association with the schools operated by them.

40. Such extracurricular activities are operated separately for Negro and white.

41. The most recent official figures on the

operation of the Monroe School System available to the general public cover the school year 1963-1964.

42. During the school year 1963-1964 there were 11 white schools and 5 Negro schools.

43. During that year there were 4,182 white students in grades first through eighth with 124 white teachers.

44. During that year there were 4,123 Negro students in grades first through eighth with 106 Negro teachers.

45. During that year there were 1,146 white students in grades ninth through twelfth with 103 white teachers.

46. During that year there were 1,228 Negro students in grades ninth through twelfth with 89 Negro teachers.

47. The funds to be secured by the bond issue voted on April 13, 1965 will be used to perpetuate the segregated school system now operated.

48. Defendants have adopted no plan for desegregation or integration of the teachers, principals and other professional personnel.

49. Defendants have adopted no plan for the desegregation or integration of the schools subject to their jurisdiction.

50. The budget adopted from time to time by Defendant Board have contained separate construction for Negro and white facilities.

51. The most recent budget adopted by Defendant Board makes allotments for Negro and white facilities and operation.

52. The case of Brown vs. Board of Education, 347 U.S. 483, 349 U.S. 274, has neither been overruled nor reversed.

53. The Defendants have taken no action to conform the operation of the schools subject to their jurisdiction to the requirements set out by the Supreme Court of the United States in Brown against Board and subsequent decisions.

54. The forms of applications for admission to the schools under the jurisdiction of Defendants are different for Negro and white.

55. The forms of applications for admission to the schools under the jurisdiction of

Defendants provide for inquiry as to whether the applicant is Negro or white.

56. The forms of registration of students employed in the schools subject to the jurisdiction of Defendants are designed as to make the designation of the race of prospective students known to the administrative personnel, of such schools.

Of Counsel:

Carl Rachlin, Esq.
38 Park Row
New York 38, New York

Alvin J. Bronstein, Esq.
603 North Farish Street
Jackson, Mississippi

Stanley E. Tolliver, Esq.
Carmack Building
Quincy Street
Cleveland, Ohio

Malcolm Farmer, III
2200 Industrial Bank Building
Providence, Rhode Island

s/ Jesse N. Stone, Jr.
Jesse N. Stone, Jr., Esq.
854½ Texas Avenue
Shreveport, Louisiana

Robert F. Collins, Esq.
Niles R. Douglas, Esq.
Lolis E. Elie, Esq.
2211 Dryads Street
New Orleans, Louisiana

James Sharp, Jr., Esq.
P. O.Box 271
105 N. 23rd Street
Monroe, Louisiana

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United States Court of Appeals
Fifth Circuit

Office of the Clerk
August 26, 1965

ARD W. WADSWORTH
lerk

Room 408-400 Royal St.
New Orleans, La. 70130

rk
S. District Court
eveport, Louisiana

Re: No. 22892 - Jimmy Andrews, et al
-vs- J. H. Scogin, President Monroe City School Board, et al
(Your No. 11297-Civil Action)

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r Sir:

Find enclosed certified copy of order this date ered by the Court issued as and for the mandate. losed also is a copy of the Singleton and Price isions referred to therein.

Since this Court has remanded this case to your rt for consideration of the motion of the appellants dismiss the proceedings, the original motion to dis- s is enclosed herewith.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By s/ G. F. Ganucheau
G. F. Ganucheau
Deputy Clerk

nd copy of order to:

Nils R. Douglas
Haskell A. Kassler
Alvin J.Bronstein
James Sharp, Jr.
Jesse N. Stone, Jr.
Carl Rachlin

Mr. Alvin P. Lassiter
Hon. Jack P. F. Gremillion
Mr. Haynes Harkey, Jr.
Mr. Harold B. Judell
Mr. W. F. Pipes, Jr.

...oOo...

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 22892

JIMMY ANDREWS, Et Al.,
Appellants

vs.

J. H. SCOGIN, JR., PRESIDENT OF
MONROE CITY SCHOOL BOARD, Et Al.,
Appellees

(Filed: Aug. 26, 1965)

MOTION FOR INJUNCTIVE RELIEF PENDING APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

Before TUTTLE, Chief Judge, GEWIN and BELL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that this cause be and it is hereby remanded to the district court for consideration of the motion of the appellants to dismiss the proceedings and for further consideration in light of Singleton v. Jackson Municipal Separate School District, et al., ____ F.2d ______, No. 22527, decided by this Court on June 22, 1965, and Price v. Denison Independent School District Board of Education, et al., _____F.2d______, No. 21632, decided by this Court on July 2, 1965.

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By s/ G. F. Ganucheau
Deputy
New Orleans, Louisiana Aug. 26, 1965
(Seal)

...oOo...

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MOTION TO DISMISS

(Number and title omitted) (Filed: August 20, 1965)

Now into the Court come Etta Mae Andrews, as mother and next friend of Jimmy Andrews, and Odell Willis, as mother and next friend of Tommy Ray Robinson, petitioners and appelants in this cause, appearing in proper person, who do respectfully represent and move that:

1.

They have discharged and do hereby affirm the discharge of all counsel and attorneys heretofore enrolled of record as their attorneys in this Court and in the United States District Court for the Western District of Louisiana; and petitioners and movers are not now represented by counsel.

2.

They move that these proceedings be now dismissed in their entirety in this Court, and in the United States District Court for the Western District of Louisiana; and pray for all orders necessary and appropriate thereto.

Monroe, Louisiana, this August 19, 1965.

s/ Mrs. Etta Mae Andrews
Jimmy Andrews, by his mother and next friend, Etta Mae Andrews, in proper person.

s/ O'Dell Willis
Tommy Ray Robinson, by his mother and next friend, Odell Willis, in proper person.

- - - - -

STATE OF LOUISIANA

PARISH OF OUACHITA

Before me, the undersigned Notary Public, personally came and appeared Etta Mae Andrews and Odell Willis, to me personally known, who, being duly sworn, did depose and state:

That they are appellants and petitioners in the above styled and numbered proceedings, and movers in the above motion to dismiss these proceedings in their entirety; that they have each read the above motion and appearance, and that the facts therein recited are true and correct; that they have discharged and do hereby discharge their counsel of record in this cause, and they are presently unrepresented by any attorney or counsel; and that they do desire, seek, and pray such orders as may be proper to dismiss these proceedings in their entirety in the United States Court of Appeals for the Fifth Circuit, and in the United States District Court for the Western District of Louisiana.

s/ Mrs. Etta Mae Andrews
Etta Mae Andrews

s/ O'Dell Willis
Odell Willis

Sworn to and subscribed before me, Notary Public, this 19th day of August, 1965.

s/ Charles J. Edwards
Notary Public, Parish of Ouachita
State of Louisiana.

...oOo...

* * * * *

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ANSWER TO THE COMPLAINT

(Number and title omitted) (Filed: August 30, 1965)

Now, into Court through undersigned counsel come MONROE CITY SCHOOL BOARD, J. H. SCOGIN, JR., President of Monroe City School Board, and VAN D. ODOM, Superintendent, made Defendants herein, and being the only Defendants named who were served and in answer to the complaint, with respect, aver that:

1.

Paragraph 1 is admitted except that it is affirmatively alleged that U.S.C.A. sub-chapter IV, Title 42:2000c and its subparts is the governing law relative to "public education".

2.

Paragraph 2 of Plaintiffs' complaint is denied.

3.

Paragraph 3 of Plaintiffs' complaint is denied.

4.

Paragraph 4 of Plaintiffs' complaint is denied.

5.

Paragraph 5 of Plaintiffs' complaint is denied.

6.

Further answering Plaintiffs' complaint, Defendants now show that the Defendants are ready and willing to comply with any reasonable orders of this Court, after full hearing had and all circumstances and benefits of such law have been applied.

7.

Further answering Plaintiffs' complaint, Defendants show that the allegations of the complaint if allowed to stand will cause irreparable and immediate damage and injury to the Plaintiffs themselves and all other persons in the Monroe City School District, as will appear on the trial hereof.

WHEREFORE, Defendants pray that after due proceedings had and hearing held in this entire matter before this Honorable Court that the proper order be entered after all circumstances and conditions are shown in the hearing to the statisfaction of this Honorable Court; and further pray for all general and equitable relief in the premises.

s/ Albin P. Lassiter
ALBIN P. LASSITER
ATTORNEY-AT-LAW
OUACHITA PARISH COURT HOUSE
MONROE, LOUISIANA

...oOo...

ANSWER TO REQUEST FOR ADMISSIONS

(Number and title omitted) (Filed: August 31, 1965)

Now, into Court through undersigned counsel come MONROE CITY SCHOOL BOARD, J. H. SCOGIN, JR., President, and VAN D. ODOM, Superintendent, and in answer to the Request for Admissions respectfully show that:

1. It is admitted that Plaintiff, Jimmy Andrews, is recorded in the records of the school as having been born May 27, 1947.
2. It is admitted that Plaintiff, Tommy Ray Robinson, is recorded in the school records as having been born April 22, 1949.

3. through 8. inclusive are admitted.

9. through 13. are neither admitted nor denied for lack of knowledge.

14. The Plaintiffs, Jimmy Andrews and Tommy Ray Robinson, were enrolled in the public schools of Monroe, Louisiana, during the 1964-65 school year.
15. It is admitted that there are Negro students in the public schools of Monroe, Louisiana.

16. and 17. are denied for the reason that the Monroe City School System is a creature of the State of Louisiana and a separate and legal distinct entity and operates entirely within

the framework of the acts passed by the state legislature.

18. Paragraph 18 is admitted.

19. Paragraph 19 is admitted except that the Mayor is not a member ex officio of the Monroe City School Board.

20. and 21. Paragraphs 20 and 21 are admitted.

22. Paragraph 22 is denied.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied for the reason that it is immaterial and irrelevant to the issues of this suit, and further, it is too broad to allow a specific answer.

25. Paragraph 25 is admitted.

26. and 27. Paragraphs 26 and 27 are denied as not being relevant or material to the suit.

28. and 29. Paragraphs 28 and 29 are admitted.

30. Paragraph 30 is denied for the reason that it is not relevant nor material to the suit.

31. Paragraph 31 is admitted, except that districts are involved also.

32. Paragraph 32 is denied for the reason that it is not relevant nor material to the issues of the suit.

33. and 34. Paragraphs 33 and 34 are denied.

35. Paragraph 35 is denied as each student is required to apply for admission to a designated school of their own choice.

36. Paragraph 36 is denied for the same reasons set forth in Paragraph 35.

37. and 38. Paragraphs 37 and 38 are denied for the reason that it is neither material nor relevant to the issues of the suit.

39. and 40. Paragraphs 39 and 40 are denied as not being material nor relevant to the suit and also too broad to allow a specific answer.

41. Paragraph 41 is denied for the reason that the official figures of the Monroe School System for the year 1964-65 are available.

42. through 46. Paragraphs 42 through 46 are admitted.

47. Paragraph 47 is denied.

48. Paragraph 48 is denied for the reason that it is neither relevant nor material to the issues of this suit.

49. Paragraph 49 is denied for the reason that the Plaintiffs have never made application to attend any school other than the ones in which they are now registered, nor has any member of the Negro race to this date made

application to attend any school other than the school to which they have been assigned.

50. Paragraph 50 is denied for the reason that it is too broad to allow specific answer, and further, for the reason that it is immaterial and irrelevant to the issues involved in this suit.

51. Paragraph 51 is denied for the reason that it is too broad and further, that it is not material nor relevant to the issues involved.

52. Paragraph 52 is denied for the reason that it is a question of law and in many instances the 1964 Civil Rights Act seems to have overruled and reversed certain parts of such case.

53. through 55. Paragraphs 53 through 55 are denied for the reason that they are immaterial and irrelevant.

56. Paragraph 56 is denied for the reason that all records are kept primarily for the benefit of the students and for statistical purposes.

s/ Albin P. Lassiter
ALVIN P. LASSITER,
DISTRICT ATTORNEY,
COURTHOUSE BUILDING,
MONROE, LOUISIANA.

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ANSWER OF CITY OF MONROE AND W. L. HOWARD

(Number and title omitted) (Filed: September 1, 1965)

NOW INTO COURT, through undersigned counsel come CITY OF MONROE, LOUISIANA, and W. L. HOWARD, Mayor, made defendants in the above styled and numbered cause, and for answer to plaintiffs' complaint, with respect represent:

1.

The plaintiffs in this cause seek two-fold injunctive relief, the substance of such relief being as follows:

(a) An injunction restraining and enjoining defendants from doing certain acts in furtherance of the operation of a biracial school system, hereinafter sometimes referred to as the "desegregation question," and

(b) An injunction restraining and enjoining defendants from delivering $6,000,000.00 of School Bonds authorized at a taxpayer's election on April 13, 1965, and sold on August 10, 1965, and from the acceptance and distribution of the proceeds thereof--until such time as the defendants submit a plan for the desegregation of the public school system, hereinafter sometimes referred to as the "School Bond Issue question."

2.

The allegations of plaintiffs' complaint relating to the desegregation question require no answer from these two defendants for the reason that the City of Monroe does not, either through its Commission Council or through its Mayor, govern, administer, manage or control the public school system of the City of Monroe nor is the Mayor of the City of Monroe an ex-officio member of the Monroe City School Board. On the contrary, under the Charter of the City of Monroe (Section 9, paragraph 3 of Act 47 of 1900, as amended by Act 320 of 1948) the government, administration and control of the Monroe City School is vested in the Monroe City School Board, a public body composed of five persons duly elected to serve thereon. However, insofar as such allegations may require an answer from these two defendants, the responses and answers of the Monroe City School Board, heretofore filed in these proceedings, are adopted and made the responses and answers of these defendants by reference.

3.

The relif sought on the School Bond Issue question should be denied for the following reasons:

(a) The City of Monroe, through its Commission Council, has authority to issue bonds for the purpose of "constructing and improving school houses and acquiring the necessary equipment and furnishings therefor" (La. Constitution, Art. 14, Section 14, and La. Rev. Statutes, Title 39, Section 551) and is charged with the responsibility of levying and collecting taxes for the payment of the principal and interest thereon as it becomes due (La. Constitution, Art. 14, Section 14, and La. Rev. Statutes, Title 39, Section 569). Pursuant to said authority and upon request from the Monroe City School Board, the Commission Council called an election in the City of Monroe to be held on April 13, 1965, at which election the qualified property taxpayers of the City of Monroe voted overwhelmingly in favor of the following proposition:

"Shall the City of Monroe, Louisiana,

incur debt and issue bonds to the amount of Six Million and No/100 Dollars ($6,000,000.00), to run twenty-five (25) years from the date thereof, with interest at a rate not exceeding five percent (5%) per annum, for the purpose of constructing and improving school houses and acquiring the necessary equipment and furnishings therefor in and for said City, title to which shall be in the public?"

Pursuant to the mandate from said property taxpayers, the City of Monroe, through its Commission Council, offered the said bonds for sale on August 10, 1965, at which time a syndicate headed by First National City Bank, New York, New York, and Scharff and Jones, New Orleans, Louisiana, made the highest and best bid, its bid resulting in an average interest rate of 3.6922 percent. Such bid was considered reasonable, and, accordingly, the same was accepted at the meeting of the Commission Council which was held on August 10, 1965. The City of Monroe proposes to deliver said bonds to the purchasers and to receive the proceeds therefrom not later than sixty (60) days following the date of the sale.

(b) The statutory period for challenging the validity of the calling of the bond election and the legality of the bond issue authorized thereat has elapsed (La. Constitution, Art. 14, Section 14(n) and La. Rev. Statutes, Title 39, Section 518) and the same has not been challenged or set aside by suit or otherwise. The validity of said proceedings is now conclusive, and may not now be challenged by these plaintiffs. The steps being taken by the City of Monroe in delivering the same to the purchasers thereof and in receiving the proceeds therefrom are merely ministerial acts in furtherance of the mandate of the electorate granted at the election held on April 13, 1965, and the same should not now be restrained or enjoined.

(c) The proposition voted upon by the electorate at the election held on April 13, 1965, does not, in fact,require or by implication direct that the proceeds from the sale of the bonds be used for any illegal purpose or in any illegal manner, and, in particular, the same does not authorize or direct the City of Monroe School Board to expend the funds for the operation of a segregated school system. The question of whether the City of Monroe should now deliver the bonds and receive the proceeds therefrom is, therefore, not germane to the question of the desegregation of the public schools of the City of Monroe, and the same should not be restrained or enjoined.

(d) No irreparable injury can result to these plaintiffs, or the class of persons whom they represent, by the delivery of the bonds and the receipt of the proceeds thereof by the City of Monroe. On the contrary, great and irreparable injury and harm may result to these plaintiffs and the class of persons whom they represent as well as to all of the citizens and taxpayers of the City of Monroe if the delivery of the bonds is not consummated. Not only will there be additional costs of readvertisement and printing of the bonds, but also there is the probability that rising interest rates and rising construction costs will have to be borne. All of these practical considerations are in addition to the intangible damages which result to the school system as a whole from the delay in providing much needed additional classroom facilities. For this reason the performance by the City of Monroe of the ministerial function of delivering the said bonds and the receipt of the proceeds therefrom should not be restrained or enjoined.

4.

Alternatively, and only in the event that this action prevents the delivery of the bonds authorized at the election held on April 13, 1965, defendants aver that their rights to recover such damages from plaintiffs and/or their attorneys, as may result therefrom, including without limitation, costs of readvertisement and printing of bonds, increased interest rates and increased construction costs, be reserved to them.

WHEREFORE, defendants pray that the complaints of plaintiffs be dismissed at their costs.

ALTERNATIVELY, defendants pray that in the event that this action prevents the delivery of the bonds authorized at the election on April 13, 1965, their rights to recover such damages from plaintiffs and/or their attorneys as may result therefrom, including without limitation, costs of readvertisement and printing of bonds, increased interest rates and increased construction costs, be reserved to them.

HAYNES L. HARKEY, JR.
HAYES, HARKEY & SMITH
1504 STUBBS AVENUE
MONROE, LOUISIANA

HAROLD B. JUDELL
FOLEY, JUDELL AND MOREL
225 BARONNE STREET
NEW ORLEANS, LOUISIANA

W. F. PIPES, JR.
PIPES AND PIPES
316 SOUTH GRAND STREET
MONROE, LOUISIANA

BY: s/ Haynes L. Harkey, Jr.
ATTORNEYS FOR CITY OF MONROE AND W. L. HOWARD, MAYOR.

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MOTION

(Number and title omitted) (Filed: September 3, 1965)

Now comes Jimmie Andrews, one of the plaintiffs in the above captioned matter by his next friend and mother, Etta Mae Andrews, and by his attorneys, Collins, Douglas & Elie, and respectfully moves this Court for an order permitting him to withdraw his motion to dismiss filed in case No. 22,892 in the United States Court of Appeals for the Fifth Circuit and,

AS GROUNDS THEREFOR, plaintiff asserts that said motion was filed at the instigation and under the influence of the defendants, and that he desires to continue to retain as counsel the law firm of Collins, Douglas & Elie, 2211 Dryades Street, New Orleans, Louisiana and Alvin J. Bronstein, 603 N. Farish Street, Jackson, Mississippi and any other attorney associated with them or any authorized representative of theirs to prosecute the instant case, as shown by the affidavit attached hereto and incorporated herein by reference.

JIMMIE ANDREWS, BY HIS NEXT FRIEND
AND MOTHER, ETTA MAE ANDREWS

COLLINS, DOUGLAS & ELIE
ATTORNEYS FOR PLAINTIFFS
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: s/ Robert F. Collins

- - - - -

I, ETTA MAE ANDREWS, do hereby reaffirm by retention of Collins, Douglas, and Elie, 2211 Dryads St., New Orleans, Louisiana, Alvin J. Bronstein, 603 N. Farish St., Jackson, Mississippi, and any other attorney associated with them or any authorized representative of theirs, to represent me in any suit or other matters which may arise in connection with the City of Monroe School Bond Issue. I first retained the above attorneys with a signed retainer agreement dated August 3, 1965.

Specifically, I reaffirm my intention of having the above attorneys continue to represent me in the following action in the United States District Court, Western District of Louisiana:

JIMMY ANDREWS BY HIS MOTHER
AND NEXT FRIEND, ETTA MAE ANDREWS: et. al.

Plaintiffs

vs.

CITY OF MONROE, LOUISIANA, et. al.

Defendants

CIVIL ACTION NO. 11297

I do not wish to have the suit withdrawn.

Signed: s/ Mrs. Etta Mae Andrews
Etta Mae Andrews
912 S. 18th Street
Monroe, Louisiana

Witnesses:________________ ______________________

Address: ________________ ______________________

________________ ______________________

Dated:____________________

SWORN TO AND SUBSCRIBED BEFORE ME ON
THIS 23 DAY OF AUGUST, 1965., s/ S. Elmo Johnson
NOTARY PUBLIC (Seal)

AMENDED AND SUPPLEMENTAL ANSWER

(Number and title omitted) (Filed: September 10, 1965)

Now, into Court, through undersigned counsel, come Monroe City School Board, J. H. Scogin, Jr., President of Monroe City School Board, and Van D. Odom, Superintendent, made Defendants herein, having previously filed an answer to the allegations of the Complaint, now file this amended and supplemental answer, to-wit:

1.

Reaffirming its previous answer, Defendants now affirmatively allege that the Complainants and their attorneys are attempting to obstruct the sale and delivery of bonds in the sum of $6,000,000 for the sole purpose of forcing the Defendants to comply with other demands in the Complaint without compliance with fundamental principles of law, and knowing full well that they have no legal right of any nature to enforce such demands, and have to date delayed the hearing on this matter by an attempted appeal to the Fifth Circuit Court of Appeals, which was denied by the Court, all for the sole purpose of causing injury and damages to Defendants.

2.

Attached hereto is photostatic copy of New York Times, Sunday, August 15, 1965, wherein "Carl Rachlin, chief counsel for the Congress of Racial Equality" verifies the allegations in Paragraph One, supra.

3.

Defendants allege that this suit is delaying, and may prevent entirely the delivery of the bonds, and in such event Defendants, especially the Monroe City School Board, will suffer damages, expenses and costs from the actions of these Complainants and the attorneys representing them and the Congress of Racial Equality, and, therefore, Defendants are entitled to reserve all rights and actions against these Complainants and all attorneys in this suit, the Congress of Racial Equality, and all others party to this suit, for any damages, expenses, costs, or losses caused by this illegal procedure.

WHEREFORE, Defendants pray this amended and supplemental answer be allowed filed, and that all the rights and actions of these Defendants be reserved, and in no manner waived, against these Complainants, the attorneys of record representing them, Congress of Racial Equality, and all others party to this suit, for any damages, expenses, costs or losses caused by this illegal action of obstructing the sale and delivery of the $6,000,000 bond issue; and for general and equitable relief in the premises.

s/ Albin P. Lassiter
ALBIN P. LASSITER
DISTRICT ATTORNEY
OUACHITA PARISH COURTHOUSE
MONROE, LOUISIANA

- - - - -

ORDER

LET this Amended and Supplemental Answer be filed.

September 10, 1965.

s/ Ben C. Dawkins, Jr.
UNITED STATES DISTRICT JUDGE

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STIPULATION

(Number and title omitted) (Filed: September 17, 1965)

MR. HARKEY: On behalf of the City of Monroe as a defendant, and the Mayor of the City of Monroe, it is stipulated that the Mayor will not interfere with the decree of this Court and, further, the Commission Council of the City of Monroe, as the governing authority of the City and the issuing authority of these bonds will, upon delivery of the bonds, deliver the proceeds thereof to the Monroe City School Board.

MR. RACHLIN: Based upon the stipulation offered by counsel, we will agree to the release of the Mayor and the Commission Council as party defendants in this case.

It is hereby stipulated by and between the parties hereto and their respective counsel that the plan of desegregation of schools of the defendant is to be submitted within thirty (30) days from the date hereof and to be effective as of mid-term school year 1965-66 and shall provide for at least desegregation of four grades the first year, including the first, second and eleventh and twelfth grades, and that the plan shall further provide that desegregation of all twelve grades shall be completed not later than the opening of schools in September, 1968,

That counsel for the School Board reserve the right to file alternative plans within the prescribed period, or at any time prior to the effective date of January, 1966, provided the same does not delay the initiation of the plan of desegregation.

In accordance with this stipulation, counsel for plaintiffs consent to the dismissal of that part of the action which relates to any restraint upon the six million dollar bond issue of the City of Monroe and the Monroe City School Board, authorized in the election held on April 13, 1965.

s/ Sidney Young
SIDNEY YOUNG, Official Reporter,
United States District Court

September 17, 1965.

...oOo...

DECREE

(Number and title omitted) (Filed: September 17, 1965)

Considering the pleadings on file in this case:

1. It is ORDERED, ADJUDGED and DECREED that ~~the City of Monroe, its Mayor, W. L. Howard;~~ J. H. Scogin, Jr., President of Monroe City School Board; F. C. Breese, Jr., L. S. Daniel, W. S. Gonnaway, Billy Hargiss, Members thereof; and Van D. Odom, Superintendent, their agents, employees, attorneys, successors in office and all those acting in concert with them are hereby permanently enjoined and restrained from:

a. Subject to the plan of desegregation to be ordered herein, continuing to refuse to admit minor plaintiffs to the schools which they would attend if they were white;

b. Continuing to assign students to schools with regard to race or color;

c. Continuing to operate a compulsory bi-racial school system in ~~Ouachita~~ the City of Monroe ~~Parish~~, Louisiana;

d. Continuing to maintain dual school zone or attendance area lines based on race or color;

e. Continuing to approve budgets construction programs, policies, curricula and programs designed to perpetuate, maintain or support a school system operated on a racially segregated basis.

2. It is further ORDERED that, since primary responsibility therefor rests with defendants, they shall prepare and submit to the Court a plan for the desegregation of ~~Ouachita-Parish~~ Monroe City Schools, effective at midterm, in January, 1966, in accordance with paragraph 1 of this Order. This plan shall provide that desegregation will progress with all deliberate speed until all grades in all schools are included. The speed and manner as to which the schools are desegregated shall be in accordance with the requirements set forth by the Fifth Circuit Court of Appeals in the following cases: *Davis* v. *Board of School Commissioners of Mobile County, Alabama,* 318 F. 2d 63 (5 Cir. 1963); *Armstrong* v. *Board of Education of the City of Birmingham, Jefferson County, Alabama*, 333 F. 2d 47 (5 Cir. 1964); *Davis* v. *Board of School Commissioners of Mobile County, Alabama*, 333 F. 2d 53 (5 Cir. 1964); *Steel* v. *Savannah-Chatham County Board of Education*, 333 F. 2d 55 (5 Cir. 1964); *Gaines* v. *Dougherty County Board of Education,* 334 F. 2d 983 (5 Cir. 1964); *Lockett* v. *Board of Education of Muscogee County School District, Georgia*, 342 F. 2d 225 (5 Cir. 1965); *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., _____F. 2d

_____, No. 22527, decided June 22, 1965; and *Price* v. *Denison Independent School District*, 5 Cir., _____ F. 2d _____, No. 21632, decided July 2, 1965.

3. Defendants may submit one or more alternate plans and may designate the order of preference assigned by them to the plan or plans. All plans must be submitted within 30 days, after which counsel for plaintiffs will have 15 days to respond.

4. The question of desegregation of teaching and administrative personnel in the ~~Ouachita-Parish~~ Monroe City Schools will be deferred until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made substantial progress. *Augustus* v. *Board of Public Instruction of Escambia County, Florida*, 306 F. 2d 862 (5 Cir. 1962); *Calhoun* v. *Latimer*, 321 F. 2d 302 (5 Cir. 1963); and *Lockett* v. *Board of Education of Muscogee County School District, Georgia*, 342 F. 2d 225, (5 Cir. 1965); and *Price* v. *Denison Independent School District*, *supra*.

5. The prayer for relief contained in the complaint with respect to the issuance, sale and delivery of school bonds is hereby dismissed.

6. Jurisdiction of this cause is retained for such further orders as may be necessary, just and proper.

THUS DONE AND SIGNED, at Monroe, Louisiana, this

17 day of September, 1965.

s/ Ben C. Dawkins, Jr.
CHIEF JUDGE

...oOo...

* * * * *

NOTE: PORTION OF RECORD OMITTED- FILED IN ITS ORIGINAL FORM

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PROPOSED PLAN FOR DESEGREGATION

(Number and title omitted) (Filed: October 19, 1965)

Pursuant to the decree of this Honorable Court, filed September 17, 1965, the undersigned respectfully present this proposed plan for desegregation of the Monroe City School System:

1.

Grades One, Two, Eleven and Twelve of all schools will be desegregated beginning at the mid-term semester of the school year 1965-66, with proper notice to interested persons.

2.

Initial or new pupil assignments will be made on written application of the parents or legal guardians of students. Application forms will be made available to all persons desiring them, at the School Board Office, 2101 Roselawn, City of Monroe, Louisiana. Such applications must be filed with the School Board at least 15 days prior to beginning of the mid-term semester. Complete instructions will be made available to interested parents or legal guardians.

3.

Transfer pupil assignments will be governed by the same rules as set out in Paragraph 2 for initial or new students.

4.

Assignments of students will not be denied because of race, religion or national origin.

5.

The applications of new or transfer students will, however, be subject to the following reasonable factors:

(a) The desires and wishes of the parents or legal guardians will be given great weight.

(b) The age of the pupil must be compared with the ages of pupils attending the class or grade to which assignment or transfer is requested.

(c) The availability of requested or necessary or desired course of study, for ultimate graduation.

(d) Availability of classroom space or other physical facilities existing at time of application.

(e) Assignment or transfer must be made on the basis of the school nearest the applicant's residence, unless determined by the Board that unusual circumstances exist making it more expedient for the welfare of the pupil. *

(f) Assignment or transfer request and application must be the choice of the parents or Legal guardians.

(g) Technical errors or omissions in application forms will not be considered as a ground for denial.

(h) After the beginning of a school semester any transfer must be with the approval of the Board, and under no conditions, unless unusual and especial circumstances can be proven by the applicant, will a transfer be allowed.

(i) All applicants for assignment or transfer must be notified in writing of the action of the Board not later than 8 days after filing of completed application.

(j) The sex of the pupil may be considered by the Board in assignment and transfers, where unusual circumstances exist. *

(k) These factors must apply equally to white and Negro students.

(l) Assignments and transfers must be in accord with all reasonable procedural requirements that have been in existence prior hereto, or that may be adopted and promulgated in the future.

6.

Commencing with mid-term session of the school year 1966-67, grades Three and Four, Ninth and Tenth will be desegregated, with proper notice to interested persons.

7.

Beginning with the mid-term semester of the school year 1967-68, grades Seven and Eight will be desegregated, with proper notice to all interested persons.

8.

Beginning with the school year 1968-69, the remaining grades Five and Six will be desegregated, with proper notice to all interested parties.

9.

In the event the School Board determines at some later date that it is advisable to install all male or female schools such can be done, but not on the basis of race, religion or national origin.

10.

School districts may be formed to expedite transportation and to insure proper classroom space and facilities in the future, but not on the basis of race, religion or national origin.

11.

In the event any part or portion of this plan is held invalid for any reason, then, in that event the School Board reserves the right to file an alternate plan, and to comply with those parts or portions not declared invalid in the interim pending the court's action on the alternate plan.

12.

The School Board reserves the right to file alternate plan or plans prior to any date set herein for effectiveness of desegregation, should unforeseen circumstances exist at the time of filing alternate plan. *

13.

The School Board reserves all rights and interests existing in equity or law should such unforeseen events occur during the enactment of this plan.

Respectfully submitted:

MONROE CITY SCHOOL BOARD:

BY: s/ W. S. Gannaway
W. S. GANNAWAY, PRESIDENT

s/ F. C. Breese
F. C. BREESE, VICE-PRESIDENT

s/ L. S. Daniel
N. S. DANIEL, SECRETARY-TREASURER

s/ Billy Hargiss
BILLY HARGISS, MEMBER

s/ Shelby Hill
SHELBY HILL, MEMBER

s/ Albin P. Lassiter
ALBIN P. LASSITER, DISTRICT ATTORNEY

...0)0...

OBJECTIONS TO PROPOSED PLAN FOR DESEGREGATION

(Number and title omitted) (Filed: Nov. 2, 1965)

Pursuant to the order of this honorable court filed September 17, 1965 the following objections to the proposed plan for desegregation submitted by the defendants herein are made on behalf of the plaintiffs:

1) The proposed plan does not follow the order of this court and the agreement made amongst the various counsel present in court at the time of the execution of said order, in that the said undertaking amongst counsel provided that Grades 3, 4, 9, 10 would be desegregated commencing with the beginning of the school year, 1966-67 and not mid-term, and that the desegregation of Grades 5, 6, 7 and 8 would take place commencing with the beginning of the school year 1967-68 and that all desegregation was to be completed prior to the opening of school in September, 1968. It will be recalled that the original date was June, 1968 but counsel for defendants requested an extension over the summer, 1968 because of technical school problems. There was never agreement to desegregate two grades in 1967-68.

2) The proposed plan does not comport to the order of this court in that it does not ensure the desegregation of the schools

   (a) All places in the schools are not open so that all parents have equal opportunity to apply for schools.

   (b) The proposed plan places too much of a burden on Negro parents who desire to send their children to a desegregated school in that

      (i) The parent must seek an application instead of visa versa

      (ii) The parent must present himself to the school

      (iii) The time sequences are so short that the school will inevitably be filled 15 days prior to the opening of semester.

      (iv) The provision for additional instruction is so vague so as to violate the order.

3) The criteria set forth in Paragraph 5 of the proposed plan are designed to maintain segregated schools.

      (i) 5(a) is irrelevant since pursuant to Paragraph 2 of the proposed plan the application will already have been made and is merely confusing.

(ii) 5(b) is designed to make certain Negro children are kept out of desegregated classes because often they attend school at a different age because of economic circumstances of their families.

(iii) 5(c) is unintelligible and is to be clarified.

(iv) 5(d) is designed to make certain that Negro children will not be able to find space in the formerly all white school.

(v) 5(e) is similarly designed since the schools were generally placed originally in either all white sections of the community or all Negro sections of the community and this provision will guarantee the maintenance of segregated schools.

(vi) 5(f) is merely a repetition of 5(a) and the same objections apply there too, as we have previously set them forth.

(vii) 5(i) bears the same objections made with regard to the shortness of time to make certain that there will be no space available for Negro children in the formerly all white schools.

(viii) 5(1) is so vague that no specific objection could be filed except to state that based upon the plan and procedures herein that provision should be stricken since it will be used as a means of maintaining segregated schools.

4) Paragraph 10 of the proposed plan is designed to permit the school board at a later date subsequent to the instituting of any plan of desegregation to resegregate the school system. No plan should be accepted which is designed to provide that any district to be set up in the future shall include at least two schools, one of which shall have been a formerly all Negro school and one of which shall have been a formerly all white school, and that the applications for admittance of one or the other of said schools shall either be on first-come first-serve basis open to all children in the district or on an alphabetical basis or by some mechanical means which will not ensure the resegregation of schools.

5) The proposed plan is cumbersom and places obstacles in the way of parents who wish to make application upon the children's behalf to any school previously all white.

First, the request by the parent must be made to the school board for an application. Secondly, the parent must fill out such application. Thirdly, the parent must run a hostile gauntlet and file such application. Fourthly, a variety of factors upon which the board may deny the request are set forth, each of which is irrelevant to the decree of the court which ordered the desegregation of schools.

6) The proposed plan does not follow the minimum requirements of guidelines of the United States Office of Education as interpreted by the Fifth Circuit Court of Appeals in several cases.

7) The proposed plan denies equal protection of the law, pursuant to the Fourteenth Amendment of the United States Constitution, in that the plaintiffs and all others similarly situated, being Negro citizens of the state of Louisiana and of the United States, parents of children attending schools operated by the defendants are treated differently from white citizens and must request transfer whereas white citizens need not do so.

It is therefore respectfully requested that this Honorable Court direct the defendant to submit a new plan which will provide:

I a) that every parent in the parish be immediately given an application setting forth the desire of the parent as to the school he or she wishes his child to attend.

b) Upon receipt of these applications they shall be filed in numerical order, and shall be fulfilled in the same numerical order.

c) It shall be assumed that regardless of distance from the child's home, if the parent applies to a particular school he will make certain the child is present at such school unless the parish already provides public transportation for such school.

d) Said application shall provide alternative choices which shall be set forth by the parent in such order as the parents requests; providing there is space in said building for said child under the numerical system provided above, the first choice will be accepted; if such choice is filled then the second or third choice shall be granted.

II In the alternative, the board may propose a plan which shall provide that all first grade children attend a particular school in the parish, all second grade children attend another school, and third grade, etc., through twelve grades; or further in the alternative the board may propose an alphabetical system which will be administered so as to effectuate desegregation of schools. Thus, the board may propose a plan that all children whose last name begins with "A" in the first grade shall go to a certain school, "B" to another school, etc., or, thirdly in the alternative the board may propose a different plan which will insure the desegregation of these schools be means not set forth in its own plan or in any of the proposals of plaintiffs.

Respectfully submitted
for the plaintiffs,

Robert F. Collins,
Nils R. Douglas,
Lolie E. Elie
2211 Dryades Street
New Orleans, Louisiana

Carl Rachlin
38 Park Row
New York, New York

Alvin Bronstein
603 N. Farish Street
Jackson, Mississippi

TO: Hon. Ben C. Dawkins
U. S. District Judge for
the Western District of
Louisiana, Monroe Division

Albin P. Lassiter
District Attorney
Monroe, Louisiana

Jesse N. Stone, Jr.
854½ Texas Avenue
Shreveport, Louisiana

James Sharp, Jr.
P.O. Box 271
105 N. 23rd Street
Monroe, Louisiana

Malcolm Farmer, III
2200 Industrial Bank Bldg.
Providence, Rhode Island

Hon. John Doar, Asst.
Attorney General
U. S. Department of
Justice
Washington, D.C.

Mr. David Seeley, Office
of Education
Dept. of Health, Education & Welfare
Washington, D. C.

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NOTE: PORTION OF RECORD OMITTED - FILED IN ITS ORIGINAL FORM

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ORDER ON PLAN FOR DESEGREGATION

(Number and title omitted) (Filed: November 2, 1965)

Respondent, Monroe City School Board, pursuant to this Court's Order of September 17th, 1965, has presented to the Court a proposed plan for desegregation of the Monroe City School system. The plaintiffs have presented their objections thereto.

Now, after due consideration of the proposed plan submitted by respondent and the objections thereto presented by plaintiffs, and after taking into consideration the local problems inherent in any attempt to desegregate the public schools in the City of Monroe, as well as prior pronouncements of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, by which pronouncements this Court is bound:

IT IS ORDERED that the following plan for the orderly desegregation of the schools under the supervision and control of the Monroe City School Board be, and it is hereby, approved and adopted:

1. All initial pupil assignments made for the school year 1965-1966 will be considered

adequate, subject however to the following transfer provisions:

(a) The Monroe City School Board will, not later than January 1, 1966, mail notices to all students, regardless of race or color, presently assigned for the school year 1965-1966 to the First, Second, Eleventh, and Twelfth grades of any school under its jurisdiction, advising them that they may, within five days thereafter, apply in person, accompanied by parents or guardian for transfer and reassignment to another school of their choice, effective mid-term January 1966.

(b) Such transfers will be made in accordance with the procedures pertaining to transfers currently in general use by the Monroe City School Board.

(c) Application forms for transfers or assignments will be made available, upon request, by the School Board to all students and parents affected, and complete, detailed instructions as to procedures will be furnished with the applications.

(d) Transfers or assignments, when requested, shall not be unreasonably denied.

No denial of a request for transfer or assignment shall be based on race or color. However, in determinating whether or not a request for transfer or assignment shall be granted, the School Board, in considering the application for transfer or assignment, may consider the following factors as proper criteria to be applied in granting or denying the request for transfer or assignment:

(1) The desire or wishes of the pupil and his parents or guardian. 5(a)

(2) Availability of space and other facilities in the school to which the transfer or assignment is requested. (5d)

(3) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested. 5(b)

(4) The availability of requested or desired courses of study in the school to which the transfer is requested. 5(c)

(5) In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the 5(e)

transfer or assignment to the comparable school closest to the pupil's residence, rather than to the school to which the transfer or assignment was requested.

5(h) (6) No pupil will be granted more than one transfer in any one school year, except under special circumstances found justifiable by the School Board.

(7) No request for transfer or assignment may be denied solely on the grounds of technical errors or omissions made by the applicant or his parents or guardian in the preparation of the application for transfer or assignment.

5(e) (8) Any new students, entering the school system for the first time, regardless of grade, shall be entitled to assignment according to their choice to the former all white school or former all Negro school closest to their place of residence.

(e) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment not later than January 14, 1966, to be effective at mid-term, 1966. If such notification is to the effect that the requested transfer or assignment has been denied, specific reasons for such denial shall be clearly set forth in the notification.

2. Commencing with the school year 1966-1967 all initial assignments of pupils to the First, Second, Third, Fourth, Ninth, Tenth, Eleventh, and Twelfth grades in all schools under the supervision and control of the Monroe City School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

To accomplish this, the Monroe City School Board shall, not later than May 1, 1966, mail notices to all students, regardless of race or color, who can be expected to enroll for the school year 1966-1967 in the First, Second, Third, Fourth, Ninth, Tenth, Eleventh, and Twelfth grades of all schools under its jurisdiction, advising them that they may, within five days from the mailing date of such notices, apply in person, accompanied by parents or guardian, for transfer and reassignment to the school of their choice, subject to the rules and procedures above set forth.

3. Commencing with the school year 1967-1968, all initial assignments of pupils to all grades in all schools under the supervision and control of the Monroe City School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

4. Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan.

5. The method of initial assignment herein provided for will, of course, be subject to all reasonable

procedural requirements that may be adopted and promulgated by the Monroe City School Board.

6. Nothing contained in this order shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

7. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such rules and procedures shall continue in full force and effect.

IT IS FURTHER ORDERED that respondents herein, and their successors in office, their agents, servants, representatives, or employees, and all other persons whomsoever acting in concert with any and all of such persons, are hereby permanently enjoined from doing anything calculated to obstruct or interfere with the orderly administration of this plan for effecting the transition of the schools hereinabove mentioned to a racially non-discriminatory basis.

Jurisdiction of this matter is retained for the entry of any further orders hereafter deemed necessary in the premises.

SIGNED this 2nd day of November, 1965, at Shreveport, Louisiana.

s/ Ben C. Dawkins, Jr.
CHIEF JUDGE

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NOTE: PORTION OF RECORD OMITTED - FILED IN ITS ORIGINAL FORM

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State of Louisiana
FOURTH JUDICIAL DISTRICT
Ouachita and Morehouse Parishes
Monroe, Louisiana 71201

December 1, 1965

Honorable Alton Curtis, Clerk
United States District Court
Federal Building
Shreveport, Louisiana

Re: Andrews, et al, Plaintiffs-Appellants
v. City of Monroe, et al, Defendant-
Appellees, Civil Action No. 11 297

Dear Mr. Curtis;

Enclosed herewith is Motion to be filed in the above captioned matter.

I would appreciate your calling this Motion to the attention of Judge Ben C. Dawkins, Jr. and advising me of any action taken herein.

Very truly yours,

s/ Albin P. Lassiter
ALBIN P. LASSITER
DISTRICT ATTORNEY

APL/e
Enclosure

(Handwriting)
12/2/65
Motion denied -
BCD, Jr.

- - - - -

MOTION

(Number and title omitted) (December 2, 1965)

Now, into Court, through undersigned counsel, and as individual members of the Monroe City School Board, comes the Monroe City School Board, respectfully moving this Honorable Court that:

1.

The ORDER ON PLAN FOR DESEGREGATION filed November 2, 1965, be amended to become effective with the fall term of school in September, 1966, for this, to-wit:

(a) On November 19, 1965, Plaintiffs filed notice of intent to appeal to the Fifth Circuit Court of Appeal on the grounds that their objections to the proposed plans were not considered by this Honorable Court, and in general to the entire Order of this Honorable Court, thus leaving the Mover in position of complying with an Order which is in no manner acceptable to Plaintiffs and thus allowing room for more and unnecessary disturbance in the school system should the Order be reversed or materially changed.

(b) Plaintiffs know that there exists in the City of Monroe another public school system, including a high school and many elementary schools, which system will not be affected by this Order at mid-term, January, 1966, and this condition of fact could well do irreparable damage to the Monroe City School system, and, in fact, could defeat the entire purpose of the Order.

WHEREFORE, Mover prays that after due consideration hereof that this Honorable Court amend its Order to become effective at the fall term of September, 1966, and for general and equitable relief in the premises.

MONROE CITY SCHOOL BOARD:

By: s/ W. S. Gannaway, President
W. S. Gannaway, President

s/ F. C. Breese, Jr.
F. C. Breese, Jr.,
Vice-President

s/ L. S. Daniel,
L. S. Daniel, Secretary-Treasurer

s/ Billy R. Hargiss
Billy R. Hargiss, Member

s/ Shelby Hill, Member
Shelby Hill, Member

s/ Albin P. Lassiter
Albin P. Lassiter, District
Attorney

...oOo...

NOTICE OF APPEAL

(Number and title omitted) (Filed: December 2, 1965)

Notice is hereby given that plaintiffs in the above entitled cause, appeal to the United States Court of Appeals for the Fifth Circuit from those parts of the judgment of this Court entered on November 2, 1965, that provided for methods of transfer, that provided for pupil assignment on the basis of choice, and from those parts that ignored plaintiffs' written objections to the proposed plan of desegregation.

Plaintiffs also appeal the denial of costs and attorneys' fees.

November 19, 1965.

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

By: s/ Robert F. Collins

OF COUNSEL:

CARL RACHLIN
38 PARK ROW
NEW YORK, NEW YORK

ALVIN J. BRONSTEIN
603 NORTH FARISH STREET
JACKSON, MISSISSIPPI

JOSEPH HARRIS DAVID
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

...oOo...

CONTENTS OF THE DESIGNATION OF THE RECORD ON APPEAL

(Number and title omitted) (Filed: December 2, 1965)

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, plaintiffs-appellants designate the entire record herein as the record on appeal.

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

BY: s/ Robert F. Collins
ATTORNEYS FOR PLAINTIFFS-APPELLANTS

OF COUNSEL:

CARL RACHLIN
38 PARK ROW
NEW YORK, NEW YORK

ALVIN J. BRONSTEIN
603 NORTH FARISH STREET
JACKSON, MISSISSIPPI

JOSEPH HARRIS DAVID
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

NOVEMBER _____, 1965.

...oOo...

November 23, 1965

Mr. Harris David
Attorney at Law
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

Dear Mr. David: IN RE: Civil Action No. 11,297-M
Andrews, et al vs.
City of Monroe, et al

Receipt is acknowledged of your letter of November 19, 1965 and the enclosures mentioned therein. Before we can file the notice of appeal, it will be necessary for you to pay the $5.00 filing fee required by the Federal Rules of Civil Procedure.

Before this record on appeal can be sent to the Court of Appeals, it is believed that you are required by the above mentioned rules to file a $250.00 bond for costs on appeal.

We notice that your designation designates the entire record on appeal and would like to call to your attention the fact that amended rule 23 of the Court of Appeals, subsection 3, requires the appellant to order from the court reporter a transcript of the trial proceedings, if one is not on file, within ten days after filing the notice of appeal. Our record does not reflect that a transcript of the proceedings of September 17, 1965 has ever been filed.

Yours very truly,

ALTON L. CURTIS, CLERK

By
Chief Deputy Clerk

TWT:oam

...oOo...

COLLINS, DOUGLAS & ELIE
Attorneys & Counsellors at Law
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

November 19, 1965

Clerk, United States
District Court
Western District of Louisiana
Monroe Division
Monroe, Louisiana

Re: Andrews, et al vs.
City of Monroe, et al
Civil Action No. 11 297

Dear Sir:

Enclosed herewith please find a Notice of Appeal and the Contents of the Designation of the Record on Appeal. Since this is a matter of some urgency, and since we will ask the Court of Appeals for a speedy hearing, we would appreciate your sending up the record at your earliest convience.

Thank you for your co-operation.

Very truly yours,

COLLINS, DOUGLAS & ELIE

BY: s/ Harris David
HARRIS DAVID

HD/ew

Enclosures: 2

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BOND FOR COSTS

(Number and title omitted) (Filed: December 2, 1965)

KNOW ALL MEN BY THESE PRESENTS, That

ISAAC REYNOLDS and
DORIS JEAN CASTLE

held and firmly bound unto Defendants and to the Clerk of the United States District Court, their executors, administrators, or assigns, in the sum of Two Hundred and Fifty ($250.00) dollars, lawful money of the United States of America, to be paid unto the said Defendants, and/or the Clerk of the United States District Court, their executors, administrators, or assigns, to which payment well and truly to be made, they do bind and oblige themselves, their heirs, executors, and administrators, jointly and severally by their presents.

Sealed with seal and dated this 1st day of December, A. D. 1965

WHEREAS, the above-named

ANDREWS, ET AL

heretofore citizens of the State of Louisiana have commenced an action in the United States District Court, in and for the Western District of Louisiana against the said CITY OF MONROE, ET AL

NOW THEREFORE THE CONDITION OF THIS OBLIGATION is such that if the above-named PLAINTIFFS in the said action shall pay on demand, all costs that may be adjudged, or awarded against them, as aforesaid in said action; then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in the presence of--

s/ Richard Haley s/ Isaac Reynolds (Seal)

s/ Evelyn Williams s/ Doris Jean Castle (Seal)

_____________________(Seal)

- - - - - -

(REVERSE SIDE OF BOND)

No.

United States District Court
For The

vs.

BOND FOR COSTS AND APPROVAL OF SAME

Taken and approved this day
of , 19

____
Clerk.

UNITED STATES OF AMERICA
ss. ISAAC REYNOLDS
Western District of Louisiana

being severally duly sworn, each for himself, doth depose and say, that he is a resident and freeholder within the State of Louisiana, and that he is worth the sum of

Two Hundred and Fifty ($250.00) dollars, over and above all his just debts and liabilities, which he owes or has incurred, and in property not exempt from execution.

s/ Isaac Reynolds

917 North Tonti Street
New Orleans, Louisiana

Sworn and subscribed to before me this 1st day of December, A.D. 1965.

s/ Robert F. Collins
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXX
NOTARY PUBLIC

UNITED STATES OF AMERICA
ss DORIS JEAN CASTLE
Western District of Louisiana

being severally duly sworn, each for himself, both depose and say, that he is a resident and freeholder within the State of Louisiana, and that he is worth the sum of

Two Hundred and Fifty ($250.00) dollars, over and above all his just debts and liabilities, which he owes or has incurred, and in property not exempt from execution.

s/ Doris Jean Cstle
917 North Tonti Street
New Orleans,Louisiana

Sworn and subscribed to before me this 1st day of December, A.D.1965

s/ Robert F. Collins
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
NOTARY PUBLIC

COLLINS, DOUGLAS & ELIE
Attorneys & Counsellors at Law
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

December 1, 1965

Mr. Alton L. Curtis
Clerk, United States District Court
Western District of Louisiana
Monroe Division
Shreveport, Louisiana

IN RE: Civil Action No. 11,297-M
Andrews, et al vs.
City of Monroe, et al

Dear Mr. Curtis:

Thank you for your letter of November 23.

Enclosed is a $5.00 filing fee, and a bond for costs of $250.00

We have requested the Court reporter to file a transcript of the trial proceeding.

Thank you again for your co-operation.

Respectfully,

COLLINS, DOUGLAS & ELIE

BY: s/ Harris David
HARRIS DAVID

HD/ew

Enclosures: 2

...oOo...

December 14, 1965

Mr. Harris David
Attorney at Law
2211 Dryades Street
New Orleans, Louisiana 70113

Dear Mr. David: IN RE: Civil Action No. 11,297-M
Andrews vs. City of Monroe,
Louisiana, et al

In reply to your letter of December 13, 1965, we wish to advise you that the record on appeal in this matter has not been sent to the Fifth Circuit Court of Appeals for the reason that the court reporter's transcript of proceedings of September 17, 1965, has not been filed by the court reporter. It is believed that this transcript is a necessary part of the record on appeal.

We have been advised by the reporter, Mr. Young, that he will file said transcript with this office immediately upon receipt of your payment of statement for the costs of transcription which has heretofore been mailed to you.

Yours very truly,

ALTON L. CURTIS, CLERK

By
Chief Deputy Clerk

TWT:oam

...oOo...

COLLINS, DOUGLAS & ELIE
Attorneys & Counsellors at Law
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

December 13, 1965

Mr. Alton L. Curtis
Chief Deputy Clerk
United State District Court
Western District of Louisiana
Shreveport, Louisiana

Re: Andrews v.
City of Monroe
Civil Action No. 11,297-M

Dear Mr. Curtis:

I would appreciate your checking to see if the record in this case has been sent to the Fifth Circuit Court of Appeals.

Since this is a matter of some urgency, I would hope that this could be done as soon as possible.

Enclosed please find a check for $26.00 and the two bills covering material you sent me in Fenton v. Loe, No. 11,330 - M, and Banks v. Homer Memorial Hospital, No. 11, 389 -S.

Thank you for your co-operation.

Very truly yours,

COLLINS, DOUGLAS & ELIE

BY: s/ Harris David
HARRIS DAVID

HD/ew

Enclosures: 3

...•0o...

TRANSCRIPT OF PROCEEDINGS

(Number and title omitted) (Filed: December 20, 1965)

Transcript of proceedings in the above-entitled action before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Monroe, Louisiana, on September 17, 1965.

APPEARANCES:

MESSRS:
CARL RACHLIN, WILLIAM Q. KEENAN and
STEPHEN A. HOPKINS, Attorneys for
Plaintiffs.

ALBIN P. LASSITER, District Attorney,
On behalf of the School Board.

HAYNES HARKEY, JR., On behalf of the
City of Monroe, Louisiana

(2) THE COURT:

Gentlemen, are both sides ready?

MR. RACHLIN:

Yes, sir, Your Honor.

MR. LASSITER:

Yes, sir.

THE COURT:

You may proceed.

Since we are not before a Jury, there is no need for an opening statement. I have read the pleadings and are familiar with them.

MR. RACHLIN:

There are a few factual questions which are not precisely based upon the admissions and denials and I, perhaps, would like to call as a witness Mr. Odom for the purpose of obviously straightening out some of the factual issues.

VAN D. ODOM

called as a witness by counsel for plaintiffs, on cross examination, being first duly sworn by the Clerk, testified as follows:

CROSS EXAMINATION

BY MR. RACHLIN:

Q Mr. Odom, would you mind telling us what position you hold with the school system of the City of Monroe?

A I am Superintendent of Schools.

Q How long have you been Superintendent of Schools?

(3) A Since July, 1952.

Q Is this school system, how many grade schools are there?

A Eleven.

Q How many high schools do you have?

A Two high schools with all four grades and the Wossman High School which goes into junior high which has two grades.

Q How many pupils do you have in all schools?

A It would be approximately 10,500.

Q Of that approximately 10,000 figure you have given us, approximately how many of those childre are white children?

A About 5,300.

Q And, similarly, would you say the rest of that ten thousand are Negro children?

A Yes.

Q Something over 4,000 Negro children?

A Yes.

Q Of these schools you have mentioned, how many of them are attended only by white children?

A We have a total of seventeen schools and of the total of seventeen, twelve are attended only by white children.

Q How many are attended by only Negro children?

(4) A Five.

Q Are there any schools in the system where they have both white and Negro children?

A No, sir.

Q In the schools attended only by white children, are there any teachers in that school who are Negro teachers?

MR. LASSITER:

We object to that on the ground it is not within the purview of the Civil Rights Act of 1964.

THE COURT:

That is correct, Mr. Rachlin. The Fifth Circuit

Court of Appeals has held in several cases that there must be integration of faculty as well as administrative staffs. I think the question is pertinent. As to when, that is another matter.

BY MR. RACHLIN:

Q Of the schools attended only by the white children, are there any teachers in those schools who are not white teachers?

A No, sir.

Q In the schools attended only by the Negro children, are there any teachers other than Negro teachers?

A No, sir.

Q Mr. Odom, I take it it is fair to say that the (5) children are assigned to various schools in a particular part of the City of Monroe based upon whether they are white or Negro?

A I might answer that this way: After this suit was filed, I have never had a request for a white child to go to a Negro school or for a Negro child to attend a white school. That is, an official request.

Q If no requests are made, white children are assigned to white schools and Negro children go to Negro schools?

A That's right.

MR. RACHLIN:

No further questions.

MR. LASSITER:

I have no questions.

CROSS EXAMINATION

BY MR. HARKEY:

Q Mr. Odom, does the Mayor of the City of Monroe sit on the City of Monroe School Board?

A No, sir.

MR. RACHLIN:

The plaintiffs rest.

MR. LASSITER:

May it please the Court, we would like to call the plaintiff, Odell Willis, on cross examination.

(6) ODELL WILLIS

called as a witness by counsel for defendants, on cross examination, being first duly sworn by the Clerk, testified as follows:

CROSS EXAMINATION

BY MR. LASSITER:

Q State your full name for the Court, please?

A Mrs. Odell Willis.

Q You are one of the plaintiffs in this suit?

A I really don't know. As of the first I was, but I don't even know why I am here today. I was just brought a subpoena.

Q What is your son's name?

A Tommy Ray Robinson.

Q Do you own any property in the City of Monroe?

A No, sir.

Q Do you pay any taxes in the City of Monroe?

A No.

Q Property taxes?

A No.

Q As a matter of fact, when the bond issue came up on the schools to vote on the bond issue, did you vote?

A No, I didn't.

Q You, along with the other plaintiffs, filed a (7) motion to dismiss you from this suit when it was pending in the Fifth Circuit Court of Appeals. Is it your wish at this time to continue in this suit or to be dismissed from it?

MR. RACHLIN:

I object to that question because it is irrelevant. It is improper cross examination. It may be a matter for some other Court to decide but not in the trial of this case.

THE COURT:

I disagree, Mr. Rachlin. She was originally a plaintiff and she filed a joint motion along with some of the other plaintiffs to dismiss the case and discharge her counsel.

BY MR. LASSITER:

Q Is it your wish today to no longer be in this case and to have the case, so far as you are personally concerned and your son is concerned, to have the case dismissed?

A As far as I am concerned and my son is concerned, yes.

MR. LASSITER:

I believe that's all.

MR. RACHLIN:

No questions.

(8) ETTA MAE ANDREWS

called as a witness by counsel for defendants, on cross examination, being first duly sworn by the Clerk, testified as follows:

CROSS EXAMINATION

BY MR. LASSITER:

Q For the record, state your name and address?

A Mrs. Etta Mae Andrews, 912 South 18th.

Q In the course of the appeal to the Fifth Circuit Court of Appeals a motion to dismiss, which you signed, was filed at that time. Is it your wish at this time on this day to continue in this case?

A It is my wish to continue.

Q On behalf of yourself and your son?

A Yes, sir.

Q Do you own any property in the City of Monroe?

A Yes, sir.

Q Where is it?

A It is located at 912 South 18th Street.

Q Is that where you live?

A Yes, sir.

Q If I tell you that that place is assessed in the name of Henry Minnyweather, what do you have to say to that?

(9) A We purchased it by an FHA loan from Henry Minnyweather.

Q When?

A In the year 1954.

Q If it is still today assessed in the name of Henry Minnyweather, can you explain that? The tax rolls of Ouachita Parish do not show it in your name?

MR. RACHLIN:

I object to the question on the ground it is irrelevant in this proceeding. It doesn't make any difference whose name the property is assessed. This is a school desegregation case and she has a child in the school and I think that is sufficient jurisdiction.

THE COURT:

What is the purpose, Mr. Lassiter?

MR. LASSITER:

There is a request for injunction to stop the bond issue in this case, along with other matters he is talking about and only a taxpayer can bring a suit involving a tax or a bond issue. It is very relevant unless counsel wants to dismiss his suit at this time relative to the taxpayer and release the bond issue.

THE COURT:

This Court is going to dismiss that portion of the case anyway.

MR. LASSITER:

I think the record should show this woman is not a taxpayer and has no right in this Court as a taxpayer.

(10) MR. RACHLIN:

I don't know whether Mrs. Andrews is or is not.

THE COURT:

I will let her answer the question.

Do you pay taxes on the property where you live?

THE WITNESS:

We receive a statement and we go to the Court House every year and sign an exemption. At least, my husband does.

BY MR. LASSITER:

Q What is your husband's name?

A Frank Andrews, Jr.

THE COURT:

In other words, you have a homestead exemption which keeps you from paying taxes?

THE WITNESS:

When we purchased the dwelling, I don't know whether that was included in the loan that was made because the loan was made through the FHA.

THE COURT:

You don't know whether the taxes are included in the payments to the FHA?

THE WITNESS:

I don't know. We do receive the statement.

THE COURT:

Your homestead exemption will be good only as to State and Parish taxes. It will not be good against the City taxes.

(11) Do you separately pay City taxes?

THE WITNESS:

Any statement that comes separately?

THE COURT:

Yes.

THE WITNESS:

None that I know of.

BY MR. LASSITER:

Q You have no tax receipts to show you ever paid taxes?

A No, none that I know of.

MR. LASSITER:

That's all.

MR. RACHLIN:

No questions.

MR. JUDELL:

If the Court please, we would like at this time to introduce on behalf of the City of Monroe Exhibit-1, which is proof of publication of the proces verbal and proceedings of election in the Monroe News Star. Also, we would like to introduce this on behalf of the School Board.

MR. RACHLIN:

No objection.

If the Court please, we would like to enter into a stipulation at this time.

THE COURT:

Dictate it to the reporter.

(12) STIPULATION

MR. HARKEY:

On behalf of the City of Monroe as a defendant, and the Mayor of the City of Monroe, it is stipulated that the Mayor will not interfere with the decree of this Court and, further, the Commission Council of the City of Monroe, as the governing authority of the City and the issuing authority of these bonds will, upon delivery of the bonds, deliver the proceeds thereof to the Monroe City School Board.

MR. RACHLIN:

Based upon the stipulation offered by counsel, we will agree to the release of the Mayor and the Commission Council as party defendants in this case.

It is hereby stipulated by and between the parties hereto and their respective counsel that the plan of desegregation of schools of the defendant is to be submitted within thirty (30) days from the date hereof and to be effective as of mid-term school year 1965-66 and shall provide for at least desegregation of four grades the first year, including the first, second and eleventh and twelfth grades, and that the plan shall further provide that desegregation of all twelve grades shall be completed not later than the opening of schools in September, 1968;

That counsel for the School Board reserve the right to file alternative plans within the prescribed (13) period, or at any time prior to the effective date of January, 1966, provided the same does not delay the initiation of the plan of desegregation.

In accordance with this stipulation, counsel for plaintiffs consent to the dismissal of that part of the action which relates to any restraint upon the six million dollar bond issue of the City of Monroe and the Monroe City School Board, authorized in the election held on April 13, 1965.

The plaintiffs have nothing further at this time.

THE COURT:

Do you have anything else?

MR. LASSITER:

No, sir.

THE COURT:

Court is adjourned.

- - - - -

(14) CERTIFICATE

I, SIDNEY YOUNG, Official Reporter, United States District Court, Western District of Louisiana, do hereby certify that the above and foregoing 13 pages of typewritten matter contain a true and correct reporting and transcription of the proceedings had at the time and place as herein before set out on Page 1 hereof.

IN WITNESS WHEREOF I have hereunto affixed my signature at Shreveport, Louisiana, on this the 2nd day of December, 1965.

s/ Sidney Young
Sidney Young
Official Reporter
U. S. District Court
Western District of Louisiana

...oOo...

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

I, ALTON L. CURTIS, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing 176 numbered pages are the entire original District Court Record, which is more clearly described by the paginated notations made in the margin of the certified copy of the Clerk's Docket Sheet, and included therein are the original papers designated by PLAINTIFFS and required by Rule 75(g) FRCP;

in a cause entitled:

JIMMY ANDREWS, by his mother and next friend, Etta Mae Andrews; TOMMY RAY ROBINSON, by his mother and next friend, Odell Willis; and ALL NEGRO STUDENTS and PARENTS SIMILARLY SITUATED

VS.

CITY OF MONROE, LOUISIANA; W. L. HOWARD, MAYOR; J. H. SCOGIN, JR., PRESIDENT OF MONROE CITY SCHOOL BOARD; F. C. BREESE, JR.; L. S. DANIEL, W. S. GONNAWAY, BILLY HARGISS, members thereof; and VAN D. ODOM, Superintendant

No. 11297 on the Civil Docket of said Court.

WITNESS my hand and seal of office at the City of Shreveport, Louisiana, on this the 23rd of December A.D., 1966

ALTON L. CURTIS
Clerk, U. S. District Court
Western District of Louisiana

BY s/ Bernadine R. Scorsone
Deputy Clerk

...oOo...

File

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

CADDO PARISH SCHOOL BOARD, et al., No.
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondents.

****

THE BOSSIER PARISH SCHOOL BOARD, et al., No.
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondents.

****

JACKSON PARISH SCHOOL BOARD, et al., No.
Petitioners,

v.

MARGARET M. JOHNSON, et al.,
Respondents.

****

CLAIBORNE PARISH SCHOOL BOARD, et al., No.
Petitioners,

v.

YVORNIA DECAROL BANKS, et al.,
Respondents.

****

CITY OF MONROE, LOUISIANA, et al., No.
Petitioners,

v.

JIMMY ANDREWS, et al.,
Respondents.

****

EAST BATON ROUGE PARISH SCHOOL BOARD, et al., No.
Petitioners,

v.

CLIFFORD EUGENE DAVIS, JR., et al.,
Respondents.

****

MEMORANDUM IN OPPOSITION TO PETITIONERS APPLICATION FOR STAY AND/OR SUSPENSION OF MANDATE

Respondents oppose Petitioners' request for stay and/or suspension of the mandate issued by the United States Court of Appeals for the Fifth Circuit, sitting en banc, in nine consolidated school desegregation cases.[1]

The opinion and decree of the Court below have been considered by the Court of Appeals on three occasions: initially by a panel of three judges, thereafter by the court sitting en banc after five hours of oral argument and again by the Court sitting en banc on application for a stay. The twelve judges denied the application.[2] Where an application for a stay is denied by a court of appeals "this Court requires an extraordinary showing before it will grant a stay of the decree below pending the application for a certiorari . . . . " Magnum Import Company v. Coty, 262 U.S. 159 at 164 (1923). The considerations presented by Petitioners to this Court are identical to those presented to the court below. Against a background of full and mature review by the court below, this Court has stated "we require very cogent reasons before we will disregard the deliberate action of that court . . . . " Coty, supra, at 164.[3]

In Bradley v. School Board, 382 U.S. 103, 105 (1965) this Court held: "Delays in desegregating a school systems are no longer tolerable." See also, Cooper v. Aaron, 358 U.S.1

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[1] Twenty copies of this memorandum have been filed with the clerk. Additionally the remaining 5 copies of Respondents' brief in the Court below have been filed with the clerk for the convenience of the Court.

[2] Judges Bell and Gewin stated that a limited stay of five days should be granted pending an application to this Court.

[3] This consideration is particularly applicable to an en banc decision of the Fifth Circuit involving school desegregation. This court has had extensive and continuous opportunity to consider implementation of the Supreme Court's mandate in Brown v.

(1958), and Lucy v. Adams, 350 U.S. 1 (1955). In support of this principle, this Court has consistently denied stays of lower court orders implementing school desegregation. See, e.g., Board of Education v. Taylor, 82 Sup. Ct. 10 (1961); Danner v. Holmes, 364 U.S. 939 (1961); United States v. Louisiana, 364 U.S. 500 (1960); Ennis v. Evans, 364 U.S. 802 (1960); Houston Independent School District v. Ross, 364 U.S. 803 (1960). Cf. Lucy v. Adams, supra.

Petitioners have no right to perpetuate segregation. The grant of a stay of the mandate in this matter would impose an intolerable burden upon respondents by deferring for another year present Constitutional rights which have been withheld for 13 years. Further, stay of the decree below would impede the orderly process of school desegregation throughout the six states comprising the Fifth Circuit. The Court below held:

> . . . [T]he provisions of the decree are intended, as far as possible, to apply uniformly throughout this circuit in cases involving plans based on free choice of schools. Dec. 29, 1966 Slip Opinion, p. 111.

District Courts throughout the circuit have deferred taking action in school desegregation cases for several months in anticipation of the decree below. These courts have, or are now in the process of implementing this decree. To stay the mandate at this time would cause considerable confusion and only further delay the orderly process of desegregation within the circuit.

Petitioners' application fails to state any ground which would support the granting of a stay by this court. A brief discussion of those acts which Petitioners contend they would be required to perform and which, absent a stay, would subject petitioners to irreparable injury, follows:

3/ (cont'd) Board of Education, 349 U.S. 294 (1955). Since 1955 the Fifth Circuit has considered and decided 42 school desegregation cases. Dec. 29, 1966 Slip Opinion, p. 35 f.n. 51.

Further, Judge Richard Rives, a retired Judge of the Court of Appeals for the Fifth Circuit, was a member of a three-judge district court which issued a per curiam decree establishing uniform requirements similar to those set out in the decree below. Lee v. Macon County Bd. of Educ. (M.D. Ala., Mar. 22, 1967).

1. Petitioners allege that each of them (six Louisiana districts) are fully desegregated and that absent the decree below each student within each such district will be afforded his freedom of choice to attend any school within the several Louisiana school districts during the 1967-68 school year. These contentions cannot be supported. Judge Bell (joined by Judge Gewin) stated in his dissent below: "We should order the school boards in these cases, which they and the entire court agree must be reversed, to forthwith complete the conversion from dual to unitary systems . . . ." (Mar. 29, 1967, Slip Opinion, p. 63). (Emphasis added).

2. Petitioners contend that the opinion below imposes an affirmative obligation upon school officials to overcome voluntary racial imbalance contrary to previous decisions of this Court. Only the decree as distinguished from the opinion of the court below is relevant to this proceeding; the decree alone imposes obligations upon petitioners. The only section of the decree related to pupil assignments provides nothing more than minimum standards for a desegregation plan based upon freedom of choice. No racial percentages are required. (Mar. 29, 1967, Slip Opinion, Paragraph II, pp. 8-14.)

3. Petitioners allege that without evidence of faculty segregation in the trial court, the court below imposes a requirement of racially balanced faculties. These contentions cannot be supported. Respondents herein are parties in six of the nine cases (including Caddo, East Baton Rouge and Bossier Parishes, Petitioners herein) decided below. In five of these six cases, including three of the six Louisiana Petitioners, the record unequivocally establishes the fact that the petitioning school boards maintain segregated faculties. In each of these six cases the plan approved by the district court and reversed by the court below failed

to provide for faculty desegregation.

The decree of the court below requires only that "Defendants shall take positive and affirmative steps to accomplish the desegregation of their school faculties and to achieve substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year . . . ." (Mar. 29, 1967, Slip Opinion, pp 18-19). No balancing is required. The decree imposes a requirement of accomplishing only what is "possible" and required by the Fourteenth Amendent. Rogers v. Paul, 382 U.S. 198 (1965), Bradley v. v. School Board of Richmond, 382 U.S. 103, (1965).

5. Petitioners contend that the Court below abdicated its judicial responsibility to the Department of Health, Education and Welfare and that it incorrectly determined the validity of the "General Statement of Policies under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools." The Court below stated with certainty that judicial responsibility was not abdicated, citing from earlier Fifth Circuit decisions: " ' [But we also] consider it important to make clear that . . . we do not abdicate our judicial responsibility for determining whether a school desegregation plan violates federally guaranteed rights.' " December 29, 1966, Slip Opinion, p. 17 (citations omitted). The decree does not metion or refer to the Guidelines.

6. Petitioners allege that they will be irreparably injured by the inflexible subjection to them of specific sections of the decree. The opinions below provides to the contrary: "School boards, private plaintiffs, and the United States may, of course, come into court to prive that exceptional circumstances compel modification of the decree." December 29, 1966 Slip Opinion, pp 111-112).

The granting of a Stay in this case would serve only to delay the orderly progress of school desegregation throughout the Fifth Circuit and perhaps the nation for another year. Such a delay cannot be "tolerated unless it imperatively and compellingly appeared unavoidable," Watson v. City of Memphis, 373 U.S. 526, 531 (1963). Petitioners have set forth no imperative or compelling considerations which would support their application for relief.

Respondents respectfully submit the application should be denied.

Respectfully submitted,

Jack Greenberg
James M. Nabrit,III
Michael Meltsner
Henry M. Aronson
Norman C. Amaker
Charles H. Jones, Jr.
10 Columbus Circle
New York, New York

Oscar Adams
1630 Fourth Ave., N.
Birmingham, Alabama

Demetrius C. Newton
408 N. 17 St.
Birmingham, Alabama

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum has been served on each of the attorneys for petitioners and the United States, as listed below, by being deposited in the United States mail, air mail, postage prepaid, on this 13th day of April, 1967:

Hon. John A. Richardson
District Attorney
1st Judicial District
Caddo Parish Courthouse
Shreveport, Louisiana

Hon. William P. Schuler
Assistant Attorney General
201 Trist Building
Arabi, Louisiana

Mr. J. Bennett Johnston, Jr.
930 Giddens Lane Building
Shreveport, Louisiana

Mr. Macon Weaver
United States Attorney
Federal Building
Birmingham, Alabama

Mr. Maurice F. Bishop
Bishop & Carlton
325-29 Frank Nelson Building
Birmingham, Alabama

Mr. Reid B. Barnes
Mr. Will J. Somerville
Lange, Simpson, Robinson &
Somerville
317 North 20th Street
Birmingham, Alabama

Hon. Jack P.F. Gremillion
Attorney General
State Capitol
Baton Rouge, Louisiana

Mr. Edward L. Shaheen
United States Attorney
Federal Building
Shreveport, Louisiana

Mr. Alvin J. Bronstein
603 North Farish Street
Jackson, Mississippi

Mr. Robert F. Collins
2211 Dryades Street
New Orleans, Louisiana

Mr. Harry Kron
Assistant Attorney General
State Capitol Building
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McEniry, McEniry & McEniry
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Bessemer, Alabama

Hon. Louis H. Padgett, Jr.
District Attorney
Bossier Bank Building
Bossier City, Louisiana

Hon. John Doar
Mr. St. John Barrett
Mr. David Norman
Department of Justice
Washington, D.C. 20530

Mr. George F. Wood
501 Van Antwerp Building
Mobile, Alabama

Mr. Franklin H. Pierce
Southern Finance Building
Augusta, Georgia

Mr. John F. Ward
Burton, Roberts and Ward
206 Louisiana Avenue
Baton Rouge, Louisiana

Mr. John Satterfield
Masonic Building
Yazoo City, Mississippi
also
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Mr. William H. Baker
Post Office Drawer E
Jonesboro, Louisiana

Mr. William F. Pipes, Jr.
Post Office Box 1184
Monroe, Louisiana

Mr. Fred L. Jackson
416 East Main Street
Homer, Louisiana

Mr. Carl Rachlin
150 Nassau Street
New York, New York 10038

Mr. Stanley E. Tolliver
8811 Quincy Avenue
Cleveland, Ohio

Mr. Harold B. Judell
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225 Baronne Street
New Orleans, Louisiana

Hon. Albin P. Lassiter
District Attorney
Courthouse
Monroe, Louisiana

Hon. Ralph Moody
Deputy Attorney General
State Capitol
Raleigh, North Carolina

Mr. J. Robertshaw
P.O. Drawer 99
Greenville, Mississippi 38702

Attorney for Respondents

File

UNITED STATES FIFTH CIRCUIT COURT OF APPEALS
400 ROYAL STREET
NEW ORLEANS, LOUISIANA

Jimmy Andrews, et al.,
Appellants,
vs.
City of Monroe, Louisiana, et al.,
Appellees

NO. 23253

MOTION FOR EXTENSION OF TIME TO APPLY FOR REHEARING

Now into Court, through undersigned counsel comes the City of Monroe, Louisiana, et al, Appellee in the above numbered and entitled matter, who moves the Court as follows:

That on December 29, 1966 an opinion was issued by this Court in this case and that your mover herein intends to apply for a rehearing.

That your mover has been informed by the Court that the printed opinion in the said case will emanate in the Court some time late next week and that there will be certain minor changes therein.

That your mover desires that it has the final opinion before it prior to making its application for rehearing, and accordingly requests that it be granted an extension of time to file such application for rehearing, said extension to be in effect for seven days after the issuance of the printed opinion in this matter.

JACK P. F. GREMILLION,
Attorney General, State of La.

WILLIAM P. SCHULER,
Second Asst. Attorney General

Albin P. Lassiter, Dist. Atty.
Fourth Judicial Dist.

O R D E R

It is ordered that the Appellee in the above numbered and entitled matter be granted an extension of time within which to file its application for rehearing, said extension to be for a period of seven days after issuance of the printed opinion in this matter.

New Orleans, La., January_____, 1967.

JUDGE

CERTIFICATE

I certify that a copy of the above and foregoing Motion for Extension of Time to Apply for Rehearing has been served on the attorneys for Appellant by placing same in the United States mails, postage prepaid and properly addressed to the following:

Alvin J. Bronstein, Esq.
603 N. Farish St.
Jackson, Mississippi

James Sharp, Jr., Esq.
P.O. Box 271
105 N. 23rd St.
Monroe, La.

Carl Rachlin, Esq.
38 Park Row
New York, N.Y. 10038

46 SEDFRE ANDREWS, LUCY vs. MURPHY, THOMAS J., 1965

State Historical Society of Wisconsin

Box 34
Folder 14

Please Retain Original Order

SUPREME COURT OF THE UNITED STATES

LUCY ANDREWS,

Petitioner

-vs-

THOMAS J. MURPHY

Respondent

No. 847 Misc.,
October Term [illegible]

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

The court of Appeals for the Sixth Circuit affirmed [illegible] judgment of the District Court of the United States of the Eastern [illegible] Michigan, Southern Division, granting respondents motion for summary judgment where petitioner filed for declaratory judgment [illegible] [illegible] under the Civil Rights Act (42 U.S.C., Section [illegible] and [illegible]), [illegible] that the dismissal by the respondent, Hon. Thomas J. Murphy, Circuit [illegible] of Wayne County Michigan, of a State Court action, violated [illegible] tutional and Statutory rights of the Plaintiff. The questions presented [illegible]

I.

May summary judgment be entered upon motion of defendant, respondent herein, when the plaintiffs petition has alleged violation of his Civil Rights without suggesting any issue of fact as to the abuse of such Civil Rights?

II.

Will a Federal District Court sit in a Court of Review [illegible] a State Supreme Court?

RESPONDENTS COUNTER STATEMENT OF FACT

In its counter statement of facts the respondent adopts the statement of the Supreme Court, State of Michigan, found in Andrews vs. Roberts 366 Mich., 620. Where the court said that the matter came before them on "...the denial of plaintiff's motion for continuance made the day her case was assigned for jury trial and its dismissal upon her counsel assertion that he was unable to proceed with the trial. The suit had been started in February of 1959 to recover damages for plaintiff's injuries claimed to have resulted from defendant's negligence in the operation of an automobile.

"Following completion of the pre-trial conference, [illegible] five motions for discovery were filed in plaintiff's behalf. Upon denial of three of said motions by the Executive Judge of the Wayne Circuit Court, (Judge O'Hara), plaintiff filed with this court (Michigan Supreme Court) in [illegible] of 1961 an emergency application for Leave to Appeal therefrom, apparently. The case was then on the Circuit Court calender of cases ready for trial. At the request of our Clerk (of the Supreme Court)in order to give us an opportunity to consider and act upon Plaintiff's application and in order to avoid any further delays in the trial of the case, in the event plaintiff's emergency application was denied, the Wayne Circuit's Executive Judge set a date certain for trial of the case.

"In the afternoon of May 3, 1961 the case was assigned for trial to the Hon. Thomas J. Murphy at which time Plaintiff's Counsel appeared before Judge Murphy without his client and without his witnesses but with a Motion for Continuance, which alleged that he (Plaintiff's Counsel) was 'unable to attend and conduct the trial at said cause on behalf of the Plaintiff due to his illness, which is disabling, unavoidable and not voluntary.' The Motion discribed counsel's illness as 'a disability in the nature of internal disorders, which became evident within the past few days.' The Motion was

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accompanied by an Affidavit of Counsel discribing his disability in the same fashion.

"Pursuant to Sections 4 (B) and 6 (B) of Wayne Circuit Local Rules, Judge Murphy referred the motion for continuance to Judge Chester P. O'Hara, the Executive Judge. Judge O'Hara refused to grant a continuance, indicating in doing so that he believed the motion had been filed only for purposes of delay. Upon return to Judge Murphy's Court room, and after counsel for the parties had explained to him what transpired before Judge O'Hara, Judge Murphy inquired whether the Plaintiff's Counsel was prepared to proceed with the trial and, upon counsel's reply that he was physically unable to do so, the cause was dismissed with prejudice."

The Michigan Supreme Court sustained the dismissal of the Plaintiff's case.

The Petitioner then filed for a rehearing in the Supreme Court of the State of Michigan but the petition was denied.

Following this, the Petitioner went to the United States District Court for the Eastern District of Michigan, Southern Division where the matter was heard by the Hon. Fred W. Kaess, United States District Judge. Here the Petitioner contended that the dismissal of the action in the State Court was motivated by racial discrimination and that the Plaintiff had been denied equal protection of the laws and deprived of property without due process of law. The Court of Appeals dismissed the Petitioners Appeal.

SUMMARY OF ARGUMENT

Petitioner in the Federal District Court raised the question of racial discrimination. The defendant filed a motion for summary judgment which motion was granted when the Plaintiff raised, "no issue of material facts showing an abuse of his Civil Rights. The Hon. Fred W. Kaess said in his order, (see Petitioners Appendix Brief, page 21) "Plaintiff has made an extremely grave charge in suggesting that defendant's decision was informed with prejudice. Nothing contained in the portions of the record that have been submitted could substantiate such a charge, nor could anything of which Plaintiff had advised the court." The respondent readily admits that if the Petitioner's Civil Rights where in any way abused, or if any racial discrimination were shown that the Petitioner would have every right to have the original case set on for trial. But merely to cry discrimination does not establish a fact.

As the Appellate Court said in its opinion below reported in 349 F. 2d 114, and at page 17 of the Petitioners Brief, "We have examined the entire file and find nothing to support the charges of racial discrimination. The Supreme Court of Michigan reviewed the trial court proceedings in a comprehensive opinion and found that the denial of plaintiff's motion for a continuance and the dismissal of her action with prejudice was amply justified by the record..."

The Court below went on to say, "At the hearing on the motion for summary judgment, the district judge repeatedly interrogated plaintiff's attorney as to the factual basis of his charges of racial discrimination. When asked specifically by the district judge whether he had proof to support this charge, the answers of plaintiff's attorney were evasive and unresponsive. We do not find in the transcript of the hearing in the district court or in the Brief and oral argument on behalf of plaintiff-appellant in this court the slightest indication of any justification of this charge. To the contrary the record compels the conclusion that plaintiff's case was dismissed in the state court because of the dilatory tactics of her attorney and his failure and refusal to proceed with the trial on the day it was set for hearing more than two years after the suit was filed."

The Petitioner sites extensive law but not a single fact. Law does not exist in a vaccum, if there was discrimination there must be evidence of it.

As the Appellate Court said, neither in the District Court nor before the Appellate Court did the Petitioner set out any fact which might lead one to a suspicion of discrimination. Nor does he at this time raise any fact in his pleading.

In the District Court and the Appellate Court and now here the Petitioner has had the opportunity to sum up the facts in support of his claim of discrimination, again the claim remains unsubstantiated.

II.

WILL A FEDERAL DISTRICT COURT SIT AS A COURT OF REVIEW OVER A STATE SUPREME COURT?

As said in the Court belwo affirming the opinion of Judge Kaess, (the Petitioners Brief page 17) "The Supreme Court of Michigan was a proper forum of review of the action taken in the Wayne County Circuit Court. If there were constitutional questions involved, plaintiff could have petitioned the Supreme Court of the United States for Certiorari. The District Court cannot review the proceedings of the Wayne County Circuit Court. See Saier vs. State Bar of Michigan, 293 F. 2d 756, cert. denied, 368 U.S. 947; Williamson vs. Puerifoy, 316 F. 2d. 774, cert. denied, 375 U. S. 967."

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

SULLIVAN, SULLIVAN, HULL & RANGER

BY______________________________

Robert E. Sullivan
Attorney for Respondent
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Detroit, Michigan 48226
WOodward 1-8989

DATED:____________________

No. 16,127

IN THE

United States Court of Appeals for the Sixth Circuit

LUCY ANDREWS,
Plaintiff and Appellant,
vs.
THOMAS J. MURPHY,
Defendant and Appellee

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

BRIEF AND APPENDIX FOR PLAINTIFF AND APPELLANT

HAROLD L. WHITE,
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Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

STATEMENT OF QUESTIONS INVOLVED

I.

Where a civil rights action alleges a violation of rights contained in the Fourteenth Amendment to the Federal Constitution and Title 42 U.S.C.A. Sec. 1981 and jurisdiction is based on Title 28 U.S.C.A. Sec. 1343 and 42 U.S.C.A. Sec. 1983, is it proper for a Federal District Court to decline to accept jurisdiction on grounds either that a right to seek certiorari to the United States Supreme Court lay after an appeal to the state supreme court was taken or that a District Court cannot review the actions of a state trial judge?

The Court below answered "Yes".
Appellant says the correct answer is "No".

II.

Where a Federal District Court action under Title 42 U.S.C.A. Sec. 1981 and Sec. 1983, arising out of actions of a state judge in state court trial, involves a different defendant and legal foundation, different legal and factual issues than those in the state court action, upon which a state supreme court has rendered a decision on appeal, is such state court determination *res judicata* upon the later Federal District Court action?

The Court below implied the answer is "Yes".
Appellant says the correct answer is "No".

III.

Does Title 28 U.S.C.A. Sec. 2283 bar relief under a civil rights action based upon the Fourteenth Amendment to the Federal Constitution, Title 28 U.S.C.A. Sections 1343, 2201, 2202 and Title 42 U.S.C.A. Sections 1981 and 1983, seeking both a judgment declaring the right of a litigant to a state court trial and an injunction restraining a state court judge from preventing the due trial of state court litigation; or seeking only such declaratory judgment?

The Court below implied the answer is "Yes".
Appellant says the correct answer is "No".

IV.

Is a defendant's motion for summary judgment properly granted where the motion is based on a supporting affidavit that is not sworn to by affiant as being on his personal knowledge and where material facts are in dispute?

The Court below answered "Yes".
Appellant says the correct answer is "No".

V.

In a civil rights action under Title 42 U.S.C.A. Sec. 1983, does the rule applicable to a determination as to whether a violation of Title 42 U. S.C.A. Sec. 1981 or the privileges and immunities, equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution has occurred require proof of intentional or purposeful discrimination or proof of prejudice?

The Court below implied the answer is "Yes".
Appellant says the correct answer is "No".

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IN THE

United States Court of Appeals for the Sixth Circuit

◆

No. 16,127

◆

LUCY ANDREWS,
Plaintiff and Appellant,
vs.
THOMAS J. MURPHY,
Defendant and Appellee

◆

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

◆

APPELLANT'S BRIEF

◆

STATEMENT OF FACTS

This is a civil rights action alleging that the dismissal of plaintiff-appellant's action in state trial court by the defendant-appellee, a state trial judge, is in violation and deprivation of her rights to equal protection and due process of law under the Fourteenth Amendment and her rights under Title 42 U.S.C.A. 1981. The Complaint asks the Court for general relief and to declare the rights of the parties, declare the dismissal to be in violation of plaintiff-appellant's federal rights, to enjoin the future enforcement of defendant-appellee's dismissal action and restrain defendant-appellee from preventing plaintiff-appellant's lawsuit from proceeding to trial according to law. (Appendix 2a: Complaint.)

Appellant, a Negro, alleges that her state court suit against two white defendants was dismissed on the 3rd day of May, 1961, by appellee while her counsel, a Negro, was making a motion for a continuance and that said dismissal was arbitrary and unreasonable; denied her rights of access to the courts, to present evidence; to have trial and to the full and equal benefit of laws and proceedings as is enjoyed by white citizens. Appellant alleges that the procedures applied against her and her counsel have rarely, and probably never, been applied against any white litigant in the State under similar circumstances and conditions and is contrary to settled law and customary procedure in the United States and that this was done with an intention to deprive appellant of her rights guaranteed by the Constitution and federal law and solely because of her race and previous condition of servitude. (Appendix 5a-8a: Exhibit or Transcript attached to Complaint.)

Appellant appealed the Order of Dismissal to the state Supreme Court which affirmed the action taken but did not pass upon the Fourteenth Amendment challenge brought to its attention.

Appellant's rights under Title 42 U.S.C.A. Sec. 1981 were brought to the state Supreme Court's attention on motion for rehearing, but were not passed upon.

Without answering the Complaint in District Court, appellee filed a motion for summary judgment stating that there was no dispute about the chronology of events and factual matters of the Complaint, that the state Supreme Court had affirmed appellee's action and that appellee's action had been predicated solely upon appellant's counsel refusing to conduct himself in accordance with the Court Rules. (Appendix 9a-13a: Motion and attached Transcript.)

Appellant filed an affidavit in opposition to appellee's motion controverting the material allegations made therein and stating that the dismissal was ordered with the intention of treating appellant different than white litigants are treated, without just cause, and on account of her race and that the legal foundation for, party-defendant to and issues in this cause are different from those in the state court action. (Appendix 14a-15a: Affidavit.)

The Court below entered an Order granting appellee's motion for summary judgment.

ARGUMENT

I.

Where a civil rights action alleges a violation of rights contained in the Fourteenth Amendment to the Federal Constitution and 42 U.S.C.A. Sec. 1981 and jurisdiction is based on 28 U.S.C.A. Sec. 1343 and 42 U.S.C.A. Sec. 1983, is it proper for a Federal District Court to decline to accept jurisdiction on grounds either that a right to seek certiorari to the United States Supreme Court lay after an appeal to the state supreme court was taken or that a District Court cannot review the actions of a state trial judge?

With regard to exhausting state judicial remedies, the general rule has been stated to be that resort to the federal courts may be had without first exhausting the state judicial remedies. *Lane v. Wilson,* 307 U.S. 268, 83 L.

Ed. 1281, 59 S. Ct. 872. This was further acknowledged and reinforced in *Monroe v. Pape,* 365 U.S. 167, 183, 5 L. Ed. 2d 492, 81 S. Ct. 473: "It is no answer that the state has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked". In a recent consideration of the significance of the availability of appellate review by the United States Supreme Court, *England v. Louisiana Board of Medical Examiners,* 375 U.S. 411, 11 L. Ed. 2d (advance) 440, 446, 84 S. Ct. ....., the Court stated:

> "The possibility for appellate review by this Court of a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in the federal courts."

It is clear that a federal district court has jurisdiction under the Civil Rights Acts, 42 U.S.C.A. Sec. 1981 and Sec. 1983, to redress the deprivation of federal rights caused by the action (or inaction) of any person acting under color of law and that this includes members of the state judiciary. Title 28 U.S.C.A. Sec. 1343 provides:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> > (3). To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
> >
> > (4) To recover damages or to secure equitable or other relief under any Act of Congress provid-

> ing for the protection of civil rights, including the right to vote."

The civil action before the Court is authorized by law, Title 42 U.S.C.A. Sec. 1983, to be commenced by the plaintiff, who seeks to redress the deprivation of rights secured by the Fourteenth Amendment and Sixth Amendment to the United States Constitution and secured by Act of Congress set forth under 42 U.S.C.A. Sec. 1981. Section 1983 provides:

> "Every person, who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Therefore, the District Court was authorized to take jurisdiction of this cause.

The Complaint claims a deprivation of the rights contained in Title 42 U.S.C.A. Sec. 1981, which provides:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

It is significant to note that the language of the statute requires that persons other than white citizens have the "same" right and be entitled to the "full" and equal benefit of all laws and proceedings as is "enjoyed" by white citizens. References in the statute to the judicial setting is plain and apparent. It is also plain from a consideration of some of the cases which have examined their legislative history and purpose that these statutes sought to establish and secure the civil equality of Negro citizens, a group known to be the object of gratuitous malevolence from all sectors of some certain communities, and to provide a redress which was effective and practical rather than abstract and illusory. *Strauder v. West Virginia,* 100 U.S. 303, 25 L. Ed. 664; *Gibson v. Mississippi,* 162 U.S. 565, 40 L. Ed. 1075, 16 S. Ct. 904; *Hague v. C.I.O.,* 307 U.S. 496, 509, 83 L. Ed. 1423, 59 S. Ct. 954; *Monroe v. Pape, supra.*

It was understood that the statutes were directed in particular at securing their equality in and before the state courts. In an early case, commenting on an earlier version of the present Section 1981, the Court, in *Blyew v. United States,* 13 Wall. 581, 593, 20 L. Ed. 638 stated:

> "* * * 'It (the statute) would seem rather to have been to afford protection to persons of the colored race by giving to the federal courts jurisdiction of cases, the decision of which might injuriously affect them either in their personal, * * * or property rights, *whenever they are denied in courts* any of the rights mentioned and assured to them in the first section of the Act.
>
> "* * * That purpose was to guard all the declared rights of colored persons, in all civil actions to which they may be parties in interest, by giving to the District and Circuit Courts of the United States jurisdiction of such actions *whenever in the State courts any rights enjoyed by* white citizens is denied them * * *. It is also well known that in many quarters prejudices existed against the colored race, which naturally affected the administration of justice in

> the State courts * * *. These * * * the Act of Congress had in view, and * * * intended to remove." (Emphasis added.)

II.

Where a Federal District Court action under Title 42 U.S.C.A. Sec. 1981 and Sec. 1983, arising out of actions of a state judge in state court trial, involves a different defendant and legal foundation, different legal and factual issues than those in the state court action, upon which a state supreme court has rendered a decision on appeal, is such state court determination res judicata upon the later Federal District Court action?

For the protection of civil rights, "Congress has created a separate, and distinct federal cause of action". *Morrison v. David*, 5 Cir., 252 F. 2d 102, *cert. den.*, 356 U.S. 968, 2 L. Ed. 2d 1073, 78 S. Ct. 1006, *reh'g den.*, 357 U.S. 944, 2 L. Ed. 2d 1558, 78 S. Ct. 1379. *Monroe v. Pape, supra.* The factual and legal issues in this civil rights action under Title 42 U.S.C. Sec. 1981 and Sec. 1983 are different than those involved in the prior state court litigation. (Appendix page 14a-15a: Appellant's Affidavit.) Notice of a federal constitutional challenge was brought to the state Supreme Court's attention, but no determination of those issues nor of the issues under Section 1981 was had in state court. The cause of action, parties, legal and factual issues are not the same. The question was recently commented on in *McNeese et al. v. Board of Education for Community Unit School District 187, Chokia, Illinois, et al.*, 373 U.S. 668, 673, 10 L. Ed. 2d 622, 83 S. Ct. 1433:

> "* * * it is immaterial whether respondents' conduct is legal or illegal as a matter of state law. Such (federal) claims are entitled to be adjudicated in the federal courts."

It is the general rule that in subsequent proceedings under a different cause of action, the doctrine of *res judicata* is held not to apply to issues raised in the previous case which were not passed on by the court in deciding it. *United States v. International Building Co.*, 345 U.S. 502, 97 L. Ed. 1182, 73 S. Ct. 807, *reh. den.*, 345 U.S. 978, 97 L. Ed. 1392, 73 S. Ct. 1120; *Creek v. Laski*, 248 Mich. 425, 227 N. W. 817.

III.

Does Title 28 U.S.C.A. Sec. 2283 bar relief under a civil rights action based upon the Fourteenth Amendment to the Federal Constitution, Title 28 U.S.C.A. Sections 1343, 2201, 2202 and Title 42 U.S.C.A. Sections 1981 and 1983, seeking both a judgment declaring the right of a litigant to a state court trial and an injunction restraining a state court judge from preventing the due trial of state court litigation; or seeking only such declaratory judgment?

The Federal Declaratory Judgment Act, now 28 U.S.C.A. Sections 2201, 2202 provides that "In a case of actual controversy * * * any court of the United States * * * may declare the rights and legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. * * *" In addition to such declaratory judgment relief, appellant's complaint asks for injunctive relief (Appendix page 2a-5a: Complaint.) Although Title 28 U.S.C.A. Sec. 2283 states that "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments", the view has been taken in several cases that the civil rights statutes are within the stated exceptions of Section 2283. *Progress Development Corporation v. Mitchell,* 7 Cir., 286 F. 2d 222; *Cooper v. Hutchinson,* 3 Cir., 184 F. 2d 119. In *The Tribune Review Publishing Co. v. Howard Thomas,* 153 F. Supp. 486, 490-491, where plaintiff sought to enjoin enforcement of a state court order, it was held that the United States District Court had proper jurisdiction:

> "* * * and the power to issue appropriate orders against state action to protect and safeguard rights given by the Constitution of the United States and/or the Federal Civil Rights Statutes where orders or action is taken by color of state authority to deny or interfere with said Federal rights."

This view would seem consistent with the legislative history, reviewed in such cases as *Strauder v. West Virginia, supra,* which shows a major aim of those enactments to have been the securing and maintaining of the equal rights of the Negro in and before state courts. Combining this aim with what was described as seemingly a tone of "overflowing protection of constitutional rights", *Monroe v. Pape, supra,* the view in *The Tribune Review Publishing Co. v. Howard Thomas, supra,* would seem to deserve increased consideration as being the correct gauge of Congressional intent.

Furthermore, what is sought in the instant case is to put a state court proceeding into, not out of, operation, to start, not to stop, a proceeding. This is a significant difference when the intentions and purposes of the two enactments are compared.

IV.

Is a defendant's motion for summary judgment properly granted where the motion is based on a supporting affidavit that is not sworn to by affiant as being on his personal knowledge and where material facts are in dispute?

Rule 56(e) of the Federal Rules of Civil Procedure provides that "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein". The affidavit in support of Appellee's motion does not conform to this rule because it is not made on personal knowledge of the affiant and does not show affirmatively that affiant is competent to testify to the matters stated therein. (Appendix page 9a-10a: Appellee's Motion.) *Walling v. Fairmont*, 139 F. 2d 318, 8 Cir.

Because of the reference in the Memorandum and Order Granting Defendant's Motion for Summary Judgment to lack of substantiation of the allegations in the Complaint, appellant, on the premise that the Court below may have made a determination of the facts, questions the propriety of such a fact determination on a summary judgment motion on the state of the record in this case. (Appendix page 16a: Memorandum and Order.) On motion for summary judgment the Court cannot try issues of fact but can only determine whether there are issues of fact to be tried, and once having determined that affirmatively must leave those issues for determination at trial. *Knapp v. Kinsey*, 6 Cir., 249 F. 2d 797; *Empire Electronics Co., Inc. v. U.S.A.*, (2d Cir.) 311 F. 2d 175; *American Securit Co. v. Hamilton Glass Co.*, 7 Cir., 254 F. 2d 889.

V.

In a civil rights action under Title 42 U.S.C.A. Sec. 1983, does the rule applicable to a determination as to whether a violation of Title 42 U.S.C.A. Sec. 1981 or the privileges and immunities, equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution has occurred require proof of intentional or purposeful discrimination or proof of prejudice?

The statements in *Monroe v. Pape, supra*, 173, 184 may well be definitive on this question:

> "* * * Allegations of fact constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to that extent the requirements of Section 1983."
>
> "* * * Section 1983 should be read against background of tort liability that makes a man responsible for the natural consequences of his act."

An earlier case, *Agnew v. Compton,* 9 Cir., 239 F. 2d 226, 227, reached somewhat the same conclusion:

> "* * * The first two sections of the Civil Rights Acts guaranteeing equal rights under the law and property rights of citizens have as their purpose to provide for equality between persons of different races and to predicate an action thereon, plaintiff must have been deprived of a right which, under similar circumstances, would have been accorded to a person of a different race."

If proof of intentional or purposeful discrimination is held to be not required to found the instant action, considering the admission in Appellee's motion for summary judgment of the truth of the factual matters in Appellant's Complaint, the instant cause is in a posture for judgment for Appellant to be rendered. (Appendix 9a-10a: Motion for Summary Judgment.)

It was said in *Hill v. Texas,* 316 U.S. 400, 406, 86 L. Ed. 1559, 62 S. Ct. 1159, that "Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand". To that, in theory at least, all may agree. Section 1891 also proposes something far more than an abstract right. Its potentials as a tool or aid in increasing the growth of law and the quality of justice, no less than its history, should warrant a broad appraisal of its values.

RELIEF

Appellant respectfully requests that this Court reverse the Order Granting Defendant's Motion for Summary Judgment rendered by the Court below, remand for further proceedings, and grant such other or further relief it deem proper.

Respectfully submitted,

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United States of America

District Court of the United States

LUCY ANDREWS,
Plaintiff,
v.
THOMAS J. MURPHY,
Defendant.

Civil Action
File No. 25,286

APPELLANT'S APPENDIX

◆

DOCKET ENTRIES

1964	
May 1.	Complaint filed; summons issued.
May 11.	Summons filed.
May 18.	Motion for Summary Judgment filed; hearing 6-15-64.
June 15.	Affidavit of Harold L. White in Opposition to Motion for Summary Judgment, filed.
June 15.	Motion for Summary Judgment heard and taken under advisement; Kaess, J.
July 6.	Memorandum and Order Granting Defendant's Motion for Summary Judgment, filed and entered; Kaess, J.
July 6.	Proof of service, filed.
Aug. 4.	Notice of appeal, filed.
Aug. 4.	Bond on appeal in $250.00 filed; New Amsterdam Casualty Co.
Aug. 5.	Proof of mailing filed.
Sept. 2.	File mailed to Carl Reuss, Clerk.
Sept. 10.	Acknowledgment filed.

COMPLAINT

(Filed May 1, 1964)

The plaintiff for her complaint and claims against the defendant through Harold L. White, her attorney, alleges:

I. That this action arises under the Fourteenth Amendment to the United States Constitution and Sections 1981 and 1983 of Title 42 of the United States Code. Jurisdiction is conferred on this Court by Title 28, United States Code, Sections 1331, 1343, 2201 and 2202. The matter in controversy exceeds the sum or value of $10,000.00, exclusive of interests and costs.

II. That the plaintiff is, and was at all times mentioned herein, a native born citizen of the United States of America of full age, residing in Wayne County, Michigan, and is a member of the Negro race.

III. That the defendant is, and was at all times mentioned herein, a citizen of the United States of America, residing in Wayne County, Michigan, and a judge of the Wayne County Circuit Court of the State of Michigan.

IV. That this is a proceeding for an injunction and for a declaratory judgment to determine a question of actual controversy between the parties, to wit:

Whether the dismissal of plaintiff's cause of action in the Wayne County Circuit Court by the defendant, as hereinafter alleged and set forth, is in violation of and denies to plaintiff her right to equal protection and due process of the law and her privileges and immunities under the Fourteenth Amendment to the Constitution of the United States and the rights secured to her by Title 42, United States Code, Sections 1981 and 1983.

V. That on the 3rd day of May, 1961, plaintiff in the instant cause, was plaintiff in a negligence suit filed on March 6, 1959, against two defendants who were of the Caucasian race, in the Wayne County Circuit Court, case number 302-172 in said Court, seeking damages for partially disabling permanent injuries she suffered when an automobile in which said defendants were riding ran into the rear of an automobile in which plaintiff was a passenger.

VI. That on the 3rd day of May, 1961, the defendant, while holding the office and acting in the capacity of a Wayne County Circuit Court Judge, pursuant to statutes of the State of Michigan, did, under color of the statutes, regulations, customs and usages of the State of Michigan, take action and make an order dismissing with prejudice plaintiff's aforesaid negligence suit.

VII. That said dismissal was made upon the presentation of a motion for continuance to the defendant, to whom said case had been assigned for trial, by plaintiff's attorney of record, like plaintiff a member of the Negro race. The said dismissal was made by defendant herein simultaneously with and within the same pronouncement which overruled the motion for continuance, without calling the case for trial, without demanding that plaintiff proceed, without warning that a dismissal of the cause was being considered, without inquiring whether or not plaintiff's counsel would in fact proceed, or offering plaintiff's counsel the opportunity to proceed, in view of the apparent impossibility of securing a grant of a continuance. Attached hereto and marked Exhibit "A" is a copy of the transcript of the proceedings wherein the dismissal was made.

VIII. That the defendant refused to permit plaintiff's counsel to complete his statements and cut counsel off in mid-sentence and from further statements in attempted explanation of his position, refusing to hear all the available evidence concerning the matters connected with the dismissal and in effect denying plaintiff a full and equal opportunity to exercise her right of access to the courts, to make argument, to present evidence, to have her day in court, to obtain equal treatment and due process of law.

IX. That the foregoing acts of the defendant were arbitrary, unreasonable and were done deliberately, wilfully and with an intention to deprive plaintiff of her rights guaranteed to her by the Fourteenth Amendment to the United States Constitution and by Title 42, United States Code, Sections 1981 and 1983.

X. That the foregoing acts of the defendant were done as and were acts of racial discrimination. That the manner, mode and course of procedure applied against this plaintiff and her counsel have rarely, and probably never, been applied against any white litigant in the State under similar circumstances and conditions and are contrary to settled law and customary procedure in the United States, the benefits of which are secured to and enjoyed by white litigants in the State of Michigan and throughout the United States of America.

XI. That the foregoing acts of the defendant were done as a result of an intentional purpose to discriminate between persons and classes of persons, to discriminate solely on account of race against the plaintiff and her rights, in relation to white litigants under the same or similar circumstances and conditions.

XII. That the foregoing acts of the defendant, done under color of state law, abridged and violated plaintiff's rights under the equal protection, due process and privileges and immunities clauses of the Fourteenth Amendment to the Constitution of the United States and deprived plaintiff of her rights secured to her by Title 42, United States Code, Sections 1981 and 1983, and violated the provisions of Article 6, Section 2 of the Constitution of the United States, which specifies that the Constition and laws of the United States shall be the supreme law of the land.

XIII. That the plaintiff has suffered irreparable injury in the past, is suffering at present and is clearly threatened with irreparable injury in the future, both great and immediate, by reason of the acts herein complained of, and has no plain, adequate or complete remedy to redress these wrongs other than by suit for an injunction.

Wherefore, plaintiff prays:

A. That the Court define and declare the rights and legal relations of the parties in the subject matter here in controversy and declare the aforesaid dismissal of plaintiff's cause of action to be in violation of the Fourteenth Amendment to the United States Constitution, Sections 1981 and 1983 of Title 42, United States Code and Article 6, Section 2 of the United States Constitution.

B. That the defendant, his successors in office and all persons acting in defendant's behalf and in behalf and support of defendant's action be enjoined from further enforcement of defendant's aforesaid Order of dismissal of May 3, 1961, and be restrained from preventing plaintiff's aforesaid lawsuit from proceeding to trial according to law.

C. That the plaintiff may have such other relief as may appear to this Court to be fair and just.

/s/ Harold L. White
Attorney for Plaintiff
6339 14th Street
Detroit 8, Michigan

Dated: May 1, 1964.

EXHIBIT A

HEARING ON MOTION FOR CONTINUANCE

(Judge Murphy)

(Filed May 23, 1961)

Proceedings had in the above entitled cause before the Honorable Thomas J. Murphy, Circuit Judge, at Detroit, Michigan, on Wednesday, May 3, 1961.

Appearances: Harold L. White, Esq., appearing for the plaintiff; Robest E. Sullivan, Esq., appearing for the defendants.

(2) PROCEEDINGS

The Court: Let the record show that in this case Lucy Andrews, plaintiff, versus David Roberts and Bobby Johnson, jointly and severally, defendants, No. 302,172, that counsel for the plaintiff requested the court for a continuance; that the court informed him that according to our rules and regulations that when a case is sent down for trial the court under the rules has no authority to grant any continuance, unless something happens during the trial that requires it, and I informed counsel to that effect, and sent him back to the Executive Judge, who under our rules is the only one who can grant a continuance. What happened, counsel?

Mr. White: As I understood it, I presented the matters that I told you to Executive Judge O'Hara.

The Court: Judge O'Hara.

Mr. White: He said that I was to bring in my physician for cross examination or for examination.

The Court: No, I mean just now.

Mr. White: Just now that is what he said. He then told us—

The Court: I mean what did he say about granting a continuance?

Mr. White: He said he wanted proof.

(3) The Court: Did he grant a continuance? The Assignment Clerk brought the file back to me and said Judge O'Hara said there could be no continuance; that you had to proceed now.

Mr. White: I am trying to repeat what he said, the effect of what he said. I can't say for myself, all I can say is what I heard him say.

The Court: Did he say to come back and try it?

Mr. White: No. He said, "go back down to Judge Murphy."

The Court: Yes.

Mr. White: "And see what he wants to do with it," I believe; something to that effect.

Mr. Sullivan: Your Honor, we appeared before Judge O'Hara and he advised Mr. White he would not give him one minute of continuance, and that he was not going to make any ruling on his motion for a continuance without a doctor present that he could cross examine, and in lieu of that he was to return to Judge Murphy's court and there would be no continuance granted.

The Court: You are not ready to proceed?

Mr. White: I am still presenting my motion to the court.

(4) The Court: No, I say you are not ready to proceed?

Mr. White: I am physically unable to carry on the case for this client. I will be physically unable to. I am in need of medical attention at this time.

The Court: You are the one?

Mr. White: Yes, that is right.

The Court: Because you are physically unable. I am sorry. As I told you, I have no authority. The only one you can get a continuance from is Judge O'Hara. Our rules expressly say that. It is Rule 6-B. "Trial Judges. Power to Dispose of cases assigned." After talking about other things it says: "such judge shall not grant a continuance in a contested case assigned to him for trial or hearing unless such trial or hearing has commenced the interests of justice shall require such a continuance."

So the only one that can grant you a continuance is the Executive Judge, and you have been there and he has denied it, so if you are not able to proceed, and you say you haven't your client here at all?

Mr. White: No, they are not here because they have no attorney to represent them. I can not represent them. I am not physically able to represent them.

The Court: That is something that you had to take up with Judge O'Hara and Judge O'Hara is the one who has decided that, not me.

(5) Mr. White: I can not say that Judge O'Hara has decided that the continuance should be denied.

The Court: Yes, he has because the Assignment Clerk just brought the file and the assignment slip and said Judge O'Hara said no continuance; that the case should proceed.

Mr. Sullivan: Judge O'Hara made a record of it and my people are here. I had to bring my men down here and I am here with the party defendants and other witnesses in the courtroom and I am prepared to proceed.

Mr. White: I will say in reply to that that I notified Mr. Sullivan of this disability in time for him to have understood that there would be no presentation in behalf of the plaintiff and myself. I would say for the record that at this point the plaintiff has no counsel representing her. I can not say that I am representing her, because she would need counsel physically able to be present to conduct the trial. I am not physically able. I will probably have to discontinue the practice of law in this court, and because of those reasons—

The Court: I am sorry. I don't wish to cut you short, but you are arguing to the wrong judge. I just read you the rule. I have no authority to do it, so the only thing I can do, if you are not able to proceed, is order that the case be dismissed, with prejudice, and I so order. Bring in an order dismissing it with prejudice.

(6) Mr. White: For the record—

The Court: There is no use arguing with me. I told you I have no authority. Judge O'Hara is the only one who can grant it.

Mr. White: It was my understanding that Judge O'Hara did not himself deny the request for a continuance.

The Court: I have ruled.

(7) State of Michigan,
County of Wayne—ss.

I, Vernon T. Marg, an official Court Reporter for the Wayne County Circuit Court, do hereby certify that I reported in shorthand the proceedings had before the Honorable Thomas J. Murphy, Circuit Judge, on Wednesday, May 3, 1961, in the case of Lucy Andrews, plaintiff versus David Roberts and Bobby Johnson, jointly and severally, defendants, Case No. 302,172; that the foregoing transcript of six pages is a full, true and accurate transcript of the proceedings had in the above cause on the above date.

Vernon T. Marg,
Official Court Reporter,
Wayne County Circuit Court,
1611 City-County Building,
Detroit 26, Michigan.

NOTICE OF HEARING ON MOTION FOR SUMMARY JUDGMENT

(Filed May 18, 1964)

To: Harold L. White
Attorney for Plaintiff
6339 14th Street
Detroit 8, Michigan

Please take notice that the attached Motion for Summary Judgment will be brought on for hearing on Monday, June 15, 1964 at 9:30 A.M. before the Honorable Fred W. Kaess, Room 851 Federal Building, Detroit, Michigan.

Sullivan, Sullivan, Hull & Ranger
By: /s/ Robert E. Sullivan
Attorneys for Defendant
3666 Penobscot Building
Detroit, Michigan 48226

Dated: May 14, 1964.

MOTION FOR SUMMARY JUDGMENT

(Filed May 18, 1964)

Comes now the Defendant, Thomas J. Murphy, by and through his attorney, Robert E. Sullivan, and moves this Court for a Summary Judgment of no cause for action on the following grounds and reasons:

1. There is no dispute about the chronology of events and factual matters of the Complaint.

2. That a dismissal of the cause of action was predicated upon the conduct of the Plaintiff's attorney.

3. That the factual issues involved were presented to the Supreme Court of the State of Michigan who affirmed the conduct of the Trial Judge, Thomas J. Murphy, as well as the Executive Judge of Wayne County.

4. That the decision of both Trial Judge Thomas J. Murphy, Defendant herein, and Executive Judge O'Hara

was predicated solely upon Plaintiff's attorney Harold L. White refusing to conduct himself in accordance with the Court Rules as per copy of the transcript of Judge O'Hara taken from the records of the Michigan Supreme Court.

5. That the Complaint heretofore filed is spurious and not made in good faith, if not in fact contemptuous, and made solely for the purpose of attempting to circumvent Harold White's malpractice on behalf of his client.

6. That Plaintiff's attorney, Harold White, who drew the pleadings herein has stated before the Court that he is physically unable to practice before the Court as per the statements contained in the transcript before Judge O'Hara, attached hereto and made a part hereof.

Wherefore, Defendant Thomas J. Murphy moves this Court that the Complaint heretofore filed be dismissed.

2. That the Federal District Court, now having jurisdiction over the person of Harold White, make diligent inquiry and examination concerning his fitness to practice before this Court.

3. Inquire into and further diligent inquiry concerning his failure to disclose the entire record pertaining to the nature of the Complaint heretofore filed.

4. Make diligent inquiry from the Plaintiff herein as to whether or not attorney White has fully informed his client of the nature of the charges which she makes in her Complaint and whether or not she has been fully advised of the nature and reason of the discharge of her Wayne Circuit Court action.

5. That the Court herein render such other judgments as under the circumstances are deemed right and just or, in the alternative, stay proceedings until Michigan Bar Association can, by proper intervening proceedings, take such necessary steps as are indicated.

Sullivan, Sullivan, Hull & Ranger
By: /s/ Robert E. Sullivan
Attorneys for Defendant
3666 Penobscot Building
Detroit 26, Michigan

Dated: May 14, 1964.

HEARING ON MOTION FOR CONTINUANCE

(Judge O'Hara)

(21)

Detroit, Michigan,
Wednesday, May 2, 1961,
About 2:55 o'clock P. M.

The Court: Start all over so he can get it all on the record.

Mr. White: I am making a motion for a continuance at this time for the reason that my physical inability will not permit me to proceed to trial with this case for the plaintiff. I notified her of this fact, and I am requesting the Court to continue this cause for such time as I am able to proceed with this cause.

The Court: Where is your client?

Mr. White: My client, I presume, is not in the courtroom. She is at her home.

The Court: I presume she isn't, but, but where is she?

Mr. White: She is at home, I presume.

The Court: Why don't you get her here?

Mr. White: I am not able to proceed.

The Court: Why?

Mr. White: Well, because of my physical disability.

The Court: What is the matter with you?

Mr. White: I have a condition which has come (22) up within the past few days, at least become evident to me within the last few days, which will prevent me from handling this case for her.

The Court: That is a conclusion. What is the matter with you? Put it on the record. I have heard all the conclusions from you that I propose to take.

Mr. White. A condition of disability due to internal disorders.

The Court: Who is your doctor?

Mr. White: I have seen Dr. Franklin.

The Court: Do you have a doctor's certificate?

Mr. White: I am due to keep an appointment with a specialist today.

The Court: Mr. White, this Court has had nothing but trouble with you since you came into this case, starting the day you came in, right up to today. I told you when you were here, before you took the matter to the Supreme Court, that the case was on call and would be tried when it was reached. At the request of the Supreme Court Clerk, I adjourned the case so that it could be heard by the Supreme Court a week later when they came in for conference on the 26th day of April. So that would be the week of the 17th, some time during that week, possibly the 19th or 20th. And I also told him that to make sure that we could comply with whatever the Supreme Court did in your case that I would put it over until May second. I would not take it off the call and I would not put it over the term, but I would put it over until May (23) second, giving the Supreme Court ample time to pass upon your problem. If they said it should go over further, we would put it over in accordance with whatever they say; if they didn't the case would go on for trial on May second, or whenever assigned thereafter, and I told you that right here in this courtroom. You have known that ever since.

You have deliberately stalled in my estimation ever since you have been here. You may be sick, but you don't look it to me. You don't look any different to me than you have on the other 30 or 40 times you have been here, not a particle.

You can try this lawsuit. You are assigned, and you will try the law suit, or you can dismiss it, or take a nonsuit if they will let you. I don't know whether they will let you. They don't have to under the rule.

You will try the lawsuit. There is no doctor's certificate here. I have no proof. I don't want to tell a lawyer I don't believe him.

Mr. White: I have an affidavit here that I will file with the Court.

The Court: You bring your doctor in here. I will take no affidavit in your case. You bring your doctor in here before me. I will put him under oath and I will ask him, because you have known all the time that your case would go on on the second, and this is now the third. This is no surprise to you. This is just another dodge in my humble opinion to get out (24) of trying the lawsuit and get it over. This is one of your many. I hate to talk to a lawyer this way, but I think you have it coming to you. I never had so much trouble with a lawyer in my life as I have had with you.

Go down to Judge Murphy. I don't care what he does with you. I won't give you one minute.

(Thereupon the hearing in this cause was concluded.)

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

State of Michigan.
County of Wayne—ss.

Robert E. Sullivan, being duly sworn deposes and says that he is the attorney for Thomas J. Murphy, Defendant in the above entitled cause, and makes this affidavit in support of his Motion for Summary Judgment and such other procedure as the Court may deem under the circumstances necessary and states that the allegations made therein are true and correct and are based upon the records of this Court or that of the Wayne Circuit Court or the Michigan Supreme Court and that he truly believes that this Court should refer the matter to the Michigan Bar to determine the qualifications of Harold L. White to practice before the Courts of this State and the Federal District Court and make such further and diligent inquiry as is prayed for in the attached Motion.

/s/ Robert E. Sullivan

Subscribed and sworn to before me this 14th day of May, 1964.

....

AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(Filed June 15, 1964)

State of Michigan,
County of Wayne—ss.

Harold L. White, being first duly sworn, deposes and says:

1. I am the attorney for the plaintiff in the above entitled cause and was the attorney for the same party as plaintiff in the Wayne County Circuit Court, have personal knowledge of the facts herein set forth and am competent to testify to the matters stated herein.

2. This affidavit is submitted in opposition to the defendant's motion for summary judgment.

3. That affiant submits, adopts and incorporates herein by reference thereto the allegations of plaintiff's Complaint, paragraphs I through XIII, heretofore filed in this said cause.

4. That the dismissal of the cause of action was not predicated upon any conduct of plaintiff's attorney; that the defendant at no time during the hearing stated such as the reason or basis of the dismissal, but instead stated: "I have no authority to do it, so the only thing I can do, if you are not able to proceed, is order that the case be dismissed, with prejudice, and I so order".

5. That all of the factual issues involved in this cause were not presented to or decided by the state court, for example, the issues of racial discrimination, and intent; that the legal foundation for, party-defendant to and issues in this cause are different from those in the state court action.

6. That the decision of neither Trial Judge Thomas J. Murphy, defendant herein, nor Executive Judge O'Hara was predicated solely upon plaintiff's attorney refusing to conduct himself in accordance with Court Rules; that

plaintiff's attorney did not dodge or stall or refuse to conduct himself in accordance with the Court Rules, either in general or as per copy of the transcript of Judge O'Hara; that plaintiff's attorney conducted himself in accordance with the Court Rules, and to a greater extent than did the defendants' attorney.

7. The action of the defendant dismissing plaintiff's cause of action, with prejudice, was made simultaneously with and within the same pronouncement which overruled a motion for continuance then being presented by plaintiff's attorney, without calling the case for trial, without demanding that plaintiff proceed, without warning that a dismissal of the cause was being considered, without inquiring whether or not plaintiff's counsel would in fact proceed, or offering plaintiff's counsel the opportunity to proceed, in view of the apparent impossibility of securing a grant of a continuance.

8. That the action was taken against the plaintiff with the intention of treating plaintiff differently than white litigants are treated, without just cause, and on account of her race and previous condition of servitude.

9. That the Complaint herein is not spurious or contemptuous, but was made regretfully and in good faith, and not for any other purpose than to correct the unfortunate miscarriage of justice suffered by this plaintiff.

10. That defendant's motion for summary judgment should be denied.

/s/ Harold L. White

Before me, on this 12th day of June, 1964, personally came Harold L. White, to me known to be the person named in the foregoing affidavit, and made oath that he has read the said affidavit by him subscribed, and knows the contents thereof, that the same is true of his own knowledge.

/s/ Claudia M. Forrest
Notary Public, Wayne County, Michigan.
My commission expires Sept. 5, 1964.

MEMORANDUM AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(Filed July 6, 1964)

At a session of said court, held in the Federal Building in the City of Detroit, Michigan, on the 6th day of July, 1964.

Present: The Honorable Fred W. Kaess, United States District Judge.

This is an action under Sections 1981 and 1983 of Title 42, United States Code. Plaintiff contends that she has been denied the equal protection of the laws and deprived of property without due process of law through the dismissal of her action for personal injuries in the Wayne County Circuit Court. The circumstances of the dismissal are discussed in the opinion of the Supreme Court of Michigan in *Andrews v. Roberts,* 366 Mich. 620. It is sufficient to say that the Supreme Court of Michigan found the denial of plaintiff's motion for a continuance and the dismissal of her action with prejudice to have been amply justified by the record.

The Supreme Court of Michigan was a proper forum of review of the action taken in the Wayne County Circuit Court. If there were constitutional questions involved, plaintiff could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Wayne County Circuit Court. See *Saier v. State Bar of Michigan,* 293 F. 2d 756, *cert. denied,* 368 U.S. 947; *Williamson v. Puerifov,* 316 F. 2d 774, *cert. denied,* 375 U.S. 967.

Plaintiff has made an extremely grave charge in suggesting that defendant's decision was informed with prejudice. Nothing contained in the portions of the record that have been submitted could substantiate such a charge, nor could anything of which plaintiff has advised the court.

It is Ordered that the defendant's motion for summary judgment be granted.

Fred W. Kaess
United States District Judge

No........................

IN THE

United States Court of Appeals for the Sixth Circuit

LUCY ANDREWS,
Plaintiff and Appellant,
vs.
THOMAS J. MURPHY,
Defendant and Appellee

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

BRIEF AND APPENDIX FOR DEFENDANT AND APPELLEE

SULLIVAN, SULLIVAN, HULL & RANGER,
Attorneys for Defendant and Appellee,
3666 Penobscot Building,
Detroit, Michigan 48226.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

COUNTER-STATEMENT OF QUESTION INVOLVED

I.

May a White Judge be denied summary relief under the Fourteenth Amendment to the Federal Constitution from the vexatious and contemptuous litigation by a Negro Citizen?

The Trial Court said "No."
The Appellee says "No."

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IN THE

United States Court of Appeals for the Sixth Circuit

No......................

LUCY ANDREWS,
Plaintiff and Appellant,
vs.
THOMAS J. MURPHY,
Defendant and Appellee

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

BRIEF OF DEFENDANT AND APPELLEE

COUNTER-STATEMENT OF FACTS

The Plaintiff's original suit in the Third Judicial Circuit of the State of Michigan was dismissed because her attorney refused to proceed to trial (7a-8a).

The dismissal was affirmed by the Supreme Court *Andrews v. Roberts,* 366 Mich. 620 (16a).

Plaintiff then brought this Federal action alleging the dismissal was because the Plaintiff (who never appeared in the Circuit Court) was colored (3a).

It is also alleged that because her attorney was colored (3a) this also had something to do with the dismissal.

A Motion for Summary Judgment was brought and granted and the Plaintiff appealed (16a).

ARGUMENT

It is significant that the Appellant does not include any portion of the transcript in the proceedings before the Federal District Court which "the Appellant . . . deems it essential for the Judges of the Court to read in order to decide those questions," pursuant to Rule 16(e).

Judge Kaess, from whom he now appeals, continually asked attorney White on what basis he alleges the accusations of bias because of color, against the Circuit Judge, when the Plaintiff was never seen by the Circuit Judge (4b, 6b). His feeble answer after rambling 21 pages on the record (4b-16b) and the Court admonishing him several times in the interim (6b, 7b, 8b, 10b, 13b, 14b, 15b) that he was evading the Court's question, finally came out with "a remark" made by deceased Judge O'Hara (15b), not Judge Murphy:

> "at the middle—at about the beginning of the last third, the Court, at the end of the statement began to make reference to 'you people' . . ." (16b).

It is difficult to discern Appellant's reasons for appeal when, on the record, he could make no case for Judge Kaess, then refused to allow the record to be supplemented by the sworn testimony of his client, subpoenaed into Court (3b):

> "The Court: . . . do you have any objection to Mr. Sullivan's request to take the testimony of Lucy Andrews . . .
>
> Mr. White: Well, I should say, your Honor, that I believe that a Motion as made here can be decided on the basis of what has been presented, without the necessity of testimony . . ." (12b).

and so gave the Court the authority to act on the facts presented orally after submission on briefs:

> "The Court: . . . that gives me the authority to hear this case in the light of the facts as they are here before the court . . . So I will adjourn this matter for two weeks and which means if you have no briefs in here I want you both here on that date to further argue this case. If there are briefs filed, the Court will dispose of it at that time.
>
> Mr. White: I see. I will file a brief" (23b).

Briefs were filed.

As the District Judge comments in his Opinion and Order thereafter:

> "Plaintiff has made an extremely grave charge . . . nothing in the record could substantiate such a charge, . . ." (16a).

In addition, the Court reminds us in its Decision that the proper procedure, if the Plaintiff felt aggrieved by the Michigan Supreme Court's Decision (as cited within) affirming the Circuit Judge's dismissal, his proper procedure would have been a Writ of Certiorari to the United States Supreme Court, for the District Court cannot review the proceedings of the Wayne Circuit Court:

> ". . . he twice petitioned the Supreme Court of Michigan for a Writ of Mandamus . . . and . . . his petitions were twice denied. This was a proper

forum and if there were constitutional questions involved, he could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Supreme Court of Michigan."

Saier v. State Bar of Mich., 293 F. 2d 756

". . . A Federal Court had neither appellate nor supervisory control over a State District Judge."

Williamson, et al. v. Hon. Paul Puerifov, Judge of the 95th District Court in Dallas County, Texas, Appellee, 316 F. 2d 774.

RELIEF

That the District Court be affirmed.

Respectfully submitted,

SULLIVAN, SULLIVAN, HULL & RANGER

By: /s/ ROBERT E. SULLIVAN
Attorneys for Appellee,
3666 Penobscot Building,
Detroit, Michigan 48226

Dated: October 30, 1964.

APPELLEE'S APPENDIX

United States of America

IN THE

District Court of the United States

For the Eastern District of Michigan
Southern Division

LUCY ANDREWS, Plaintiff, v JUDGE THOMAS J. MURPHY, Defendant.	Civil Action No. 25,286

TRANSCRIPT OF TESTIMONY

Proceedings Had in the above-entitled cause, before the Honorable Fred W. Kaess, District Judge, at Detroit, Michigan, on Monday, June 15, 1964.

Appearances: Harold L. White, Esq., Attorney-at-Law, appearing on behalf of the Plaintiff; Robert E. Sullivan, Esq., Attorney-at-Law, appearing on behalf of the Defendant.

(2)

Detroit, Michigan
Monday, June 15, 1960
Morning Session

The Clerk: Case No. 25286, Lucy Andrews, versus Thomas J. Murphy.

The Court: Defendant's motion; you may proceed.

Mr. Sullivan: May it please the Court, I am Robert Sullivan, and I represent the defendant in this case, Thomas J. Murphy, who is also the Executive Judge at the

Third Judicial Circuit for the State of Michigan in Wayne County.

We have filed a motion for summary judgment, based upon the complaint of the plaintiff, Lucy Andrews, filed in this cause charging Judge Murphy with racial discrimination in dismissing her suit.

Our motion for summary judgment asks relief in three categories.

One is that we respectfully call the Court's attention to the fact that the actual dismissal of this case reached the Supreme Court of the State of Michigan and is reported therein in volume—I believe it is 326; I will get the exact citation in a moment. It is reported in 336 Michigan 620.

(3) The motion for summary judgment, may it please the Court, is one that the complaint, as it is set out, the factual matters of the dismissal not being in dispute, and there being at this point no specific allegations that would constitute the complaint as charged of racial discrimination, that we ask for a dismissal of summary judgment on the basis of a summary judgment. But before that, in view of the excerpts which the plaintiff's attorney has filed with his complaint, we ask the Court to make inquiry—

The Court (interposing): Is that 366 or 336?

Mr. Sullivan: 336. I am sorry, 366. Did I say 36? It should be 366, I guess, 620; January, '62 case.

The Court: I have got 366, that isn't right, it is 336 Oh no, I am sorry, here it is, Andrews against Roberts?

Mr. Sullivan: Yes. 366 Michigan 620.

The Court: All right.

Mr. Sullivan: We ask that the Court also inquire into and make further inquiry concerning the failure of plaintiff in this action before you to disclose the entire record pertaining to the nature of the complaint, namely, Judge O'Hara's transcript which was part of the record. The plaintiff filed with you only Judge Murphy's transcript. But this matter was sent on that date of the (4) dismissal to Judge O'Hara, because he was at that time the Executive Judge of the Wayne Circuit Court. And I have received this date, in this morning's mail a motion—I don't know whether it has been filed with the Court—not a motion, but an affidavit in reply to our motion here for summary judgment, which alludes to the transcript of Judge O'Hara, but it was not filed originally and it was not filed until after I, in my summary judgment motion brought it to the attention of the Court that the entire record was not presented wih this complaint.

We further ask the Court to make diligent inquiry into the qualifications of Mr. White to practice before this Court, because we respectfully submit that the allegations filed in the complaint in the Federal Court against Judge Murphy of the Wayne Circuit Court are pernicious, not made in good faith and injects something that is, and never was in the picture in Wayne Circuit Court. Namely, racial discrimination. And to that extent, your Honor, I—

The Court (interposing): You mean he never raised it before?

Mr. Sullivan: No, your Honor.

The Court: All right.

Mr. Sullivan: And I have—for that reason I have subpoenaed both Lucy Andrews and Mr. Harold White (5) himself, and I would like permission to take testimony from these two individuals under oath in this matter.

And the reason that I have subpoenaed the attorney of record, which while not unprecedented, but is unusual, because Mr. White in his complaint states that the dismissal was centered both against he and his client.

And I specifically refer the Court to the allegations of paragraph 10 in the complaint, stating:

> "That the foregoing acts of the defendant were done as acts of racial discrimination—" "were done and were acts of racial discrimination. But that the manner, mode and course of procedure applied against this plaintiff and her counsel have rarely and probably never been applied against any white litigant in this State—" or "in the State under similar cirsumstances and conditions and are contrary to settled law and customary procedure in the United States," and so on.

To that extent, your Honor, I would request at this time that the defendant, as the moving party, have permission to take some testimony from Lucy Andrews (6) who is here in Court, under oath, and that such other individual in this courtroom who may become witnesses in this proceeding be sequestered, and that we have such identification from anyone else here who is interested in this matter,

The Court: All right. Let's hear from Mr. White, first.

Mr. White: Your Honor, I would say, for the plaintiff, that I have not heard so far from Mr. Sullivan a basis for the granting of his motion for a summary judgment.

As I understand it, his motion asks for a summary judgment. I cannot find in the motion or in the affidavit anything on which to found the granting of that motion.

I might say first off though, in reply to what has been said here today, first with regard to the transcript of Judge O'Hara that this action is being brought as a result of the dismissal of Lucy Andrews' cause of action in Circuit Court by Judge Murphy. And the issues as we presented in our complaint deal with the dismissal by Judge Murphy, as a whole item. Not only did Judge O'Hara deal with this case and he dealt considerably with the case, being Executive Judge and dealing with discovery motions and so forth, but other judges dealt with the case. We did not feel that it was pertinent (7) necessarily enough to file the transcript of Judge O'Hara in our complaint.

We felt that if that transcript became material or pertinent that it could well be supplied either on request, or by direction.

The Court: Let me ask you this, though I don't mean to interrupt you.

Mr. White: Certainly, your Honor.

The Court: So you carry on with your argument after I ask you this. You made the allegation in the complaint of—one I think is of significance, that there were acts based on racial discrimination. Do you have any proof of that?

Mr. White: We feel, your Honor—

The Court (interposing): There is nothing—other than your allegations there is nothing in the transcript of anybody—that I see, that in any way indicates that.

Mr. White: I can answer that on two points, your Honor.

One, the Statute under which we include and come here on today—we include in our complaint Section 1981 US Code, Title 42.

The Court: Is that the Civil Rights Section?

Mr. White: It is. And in this Statute, the (8) basis for the action does not necessarily require an intent or motive.

We wish to place the issue before the Court that is contained, we feel, clearly in that Statute. And that is that if a negro or non-white litigant is denied the rights set forth and enumerated in that Statute—

The Court (interposing): i.e.?

Mr. White: That is if such non-white litigant is denied that right, or those rights enumerated there, then—and those rights are secured to and enjoyed by the majority, or white litigants in the jurisdiction, that then the Statute is the basis for an action brought into Federal District Court.

Now that is one ground and we would—

The Court (interposing): Specifically which Section do you have in mind?

Mr. White: That is Section 1981, Title 42.

The Court: What part of it?

Mr. White: It actually is the part—it would be Section 1981.

The Court: I grant you that, but what specific wording or Section do you have reference to? You mean the general catch-all of 1981?

Mr. White: Well, I have reference to the particular parts which are set forth in the complaint. (9) That is—

The Court (interposing): You are dodging me here. What is that, 1981 of what Title?

Mr. White: 1981, Title 42.

The Court: "32"?

Mr. White: Title 42. Title 42, yes. 4-2. The Court will see from the reading of that Statute that it deals primarily with the rights of a person, a citizen in State Court, with the right to sue, as we have set forth in our complaint, the right to be a party, to give evidence, and to the full and equal benefit of all the laws and proceedings for the security of persons and property.

This Statute has been construed, and we feel that it has been construed to mean and to be interpreted to mean what the plain intents of the words are.

As I state, this is one ground on which we found our complaint and come to the Court.

A dismissal occurred under such circumstances as set forth in the transcript of Judge Murphy, which we feel subjected this litigant to a deprivation of rights to an action which is not the equal, by far, of the customary practices and procedures of the Wayne Circuit Court, and of the Courts of the State and of the country, for that matter. We feel that there was no basis in law (10) for this action, and we feel that there is a marked difference between the action taken against this plaintiff and the customary procedures which have been applied and presumably will be applied against other litigants under similar circumstances.

In addition to that we think that the testimony will develop that there was a suggestion of discrimination—racial discrimiation. We have alleged that in our affidavit in reply to this motion for summary judgment, and we intend to prove that, and from concrete evidence in the proceedings, by transcript, that there was an element of racial discrimination.

The Court: All right.

Mr. White: In addition, as I said—

The Court (interposing): The transcript has been filed. I see no reference to it as yet.

Mr. White: In the transcript—

The Court (interposing): How do you intend to prove it, what is your basis for proof in this matter?

Mr. White: We intend to prove it by showing that—by showing the course of procedure which was applied against this litigant.

The Court: Against the litigant?

Mr. White: Against the litigant. Against the plaintiff here, and the plaintiff in the Circuit Court (11) action throughout the lawsuit in Circuit Court.

The Court: The litigant ever appear in Court; any testimony taken?

Mr. White: Her deposition was taken.

The Court: Before the Court?

Mr. White: Not before the Court, your Honor.

The Court: What contact did the Court have with the litigant at any time, or any of the witnesses?

Mr. White: "By the Court," you mean by—

The Court (interposing): Or any party.

Mr. White: By the Court you mean by Judge Murphy?

The Court: Judge Murphy.

Mr. White: Judge Murphy, I don't believe, had any personal contact with the litigant.

The Court: All right, how are you going to show it then?

Mr. White: By showing that there was an intent which I believe has been conceded here in the motion set forth—filed by the defendant, that there was an intention to dismiss, or short cut the right of the plaintiff to a full hearing on the basis of charges that her counsel had not conformed with certain orders previously made by the Court. Now I refer—

(12) The Court (interposing): Then it is a reflection through you to her, is that what you mean?

Mr. White: There is a reflection as alleged, and we feel as—

The Court (interposing): In other words the animosity or prejudice, whichever it might be was directed at you and she as a result is hurt, is that what you mean?

Mr. White: Yes, I think it was—

The Court (interposing): Is that the—

Mr. White: There was a reflection, as well as the fact that there was a connection of this feeling, this animosity as a result also of a substitution in which—that had been made by her, whereby the appearance of her second counsel—

The Court (interposing): i.e., you?

Mr. White: —came to me. Yes. This is very much a part of the substitution matter; it is very much a part of the situation which raised—

The Court (interposing): Is this speculation on your part? I wanted to know where this proof is. How are you going to prove it?

Mr. White: We think that the witnesses involved can prove it. We feel that the first attorney can prove it. We feel that my testimony can prove it. We feel (13) that the items in the transcript, in certain other parts before Judge O'Hara, in which a racial remark was made, can prove it.

We feel that an examination—

The Court (interposing): Where was this racial remark?

Mr. White: It is in a transcript which was part of the proceeding, if the Court wishes me to submit it, I will.

The Court: All right. Is this in the deposition?

Mr. White: It is in a hearing before the Court on a motion, I believe, requesting discovery.

The Court: As soon as he finds where it is.

Are you familiar with the case of Kenney v. Fox?

Mr. White: Cane?

The Court: Kenney v. Fox.

Mr. White. I have read that case, your Honor.

The Court: 232 Fed. 2d 288.

Mr. White: Yes, I have notes on that case.

The Court: How is this Court going to side-step (14) that case?

Mr. White: I will have to refer to my notes on that case, in order to find what the substance of the ruling was on that. My impression at the time was that there was distinction—clear distinction between that and this situation.

The Court: Well, the law is clear.

Mr. White: If the Court wanted to—

The Court (interposing): It says:

"A prosecuting attorney is a quasi—".

This is the way it starts out—this is in the syllabus, paragraph 3.

> "A prosecuting attorney is a quasi-judicial officer and enjoys the same immunity from a civil action for damages as that which protects a judge acting within his jurisdiction over the parties and the subject matter of the litigation."

Under Civil Rights, 4:

> "The common law rule of immunity of a judicial officer for acts done in exercise of his judicial function where he has jurisdiction over both parties and subject matter, has not been abrogated by the (15) Civil Rights Act—" and I repeat, "has not been abrogated by the Civil Rights Act, and judge and prosecuting attorney who acted in committing person to—" this was in respect to commitment—"to state mental institution were not subject to liability for alleged wrongful action in this respect." Under 42 U.S.C.A. 1983, that being the section of the Civil Rights Act.

Mr. White: I might say, your Honor, that that case, as many of the cases dealing with the general situation that applies to an action to recover damages—

The Court (interposing): Your complaint—

Mr. White (interposing): No, your Honor, it is not based on an action for damages at all.

The Court: You asked for it.

Mr. White: No, we are not asking for damages whatsoever, your Honor; this is an action—

The Court (interposing): Now or when?

Mr. White: Not at all. Our complaint, the basis for the action is a request for a declaratory judgment and for injunction.

The Court: Well "immunity" means immuned, (16) doesn't it?

Mr. White: No, your Honor, it has been clearly distinguished—

The Court (interposing): Where? You knew you had to argue this case today, where is your law? The only case that I know of is the ruling case that we have always been aware of, or I have always been aware of is the Kenney case. The Cert was denied in the Supreme Court in this matter, so—

Mr. White (interposing): I think, your Honor, under the application of general principles that I can demonstrate that, the cases which apply and refer to immunity are and have been damage cases, actions for the recovery of damages against these officials and have not been cases in which the request has been for injunction or declaratory relief.

The Court: Now I see this case of Andrews against Roberts where this matter has already been adjudicated, that is with respect the basis for your complaint here has already been adjudicated in the Michigan Supreme Court. How can I forestall it when it has already been adjudicated?

Mr. White: Well, your Honor, there the res judicata principle. For one thing, as I understand it—

The Court (interposing): I don't mean that. (17) How am I going to enjoin something that has already happened? The case is dismissed.

Mr. White: Yes, it was dismissed, and we are asking that the dismissal on the basis of the Statutes which we cite, Civil Rights Statutes, be declared to have been contrary to those Statutes; contrary to the rights of the plaintiff under those Statutes, and asking for the relief which is authorized, and which—to which the Court is empowered by the Civil Rights Statute explicitly for the very purpose as it has been stated in cases which I can cite to the Court, for the very purpose of dealing with a problem which previous courts, including the United States Supreme Court, has seen as one which these Statutes were intended to deal with, and which, as expressed by the Court—

The Court (interposing): Have you got one case to substantiate your position?

Mr. White: I can, dealing with this one particular Statute, as a matter of fact.

The Court: Well, what I was referring to is under your prayer in "B":

> "That the defendant and his successors and office, and all persons acting in behalf of defendant and in defendant's behalf, and in behalf and support of the defendant's action be (18) enjoined from further enforcement of the defendant's aforesaid order of dismissal, and be restrained from preventing the plaintiff from aforesaid laws from proceeding to trial according to law."

The Supreme Court has already said that your case is dismissed, and how can—therefore, how can I now enjoin that?

Mr. White: Under the power granted, and by the Statutes which have been cited, that is, 1981 and 83, and also 1343, which provides for the—for—and I will quote that—

The Court (interposing): 1843?

Mr. White: I am sorry, 1343.

The Court: Section?

Mr. White 1343.

The Court: I mean—

Mr. White (interposing): 28 USC. Which authorizes and establishes the jurisdiction of the District Courts to— and paragraph sub 3—subparagraph 3:

> "To redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured (19) by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

And subparagraph 4:

> "To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Now, I might say, and I will cite this case to the Court— that would be 13 Wall., it is an old case, but very much in point.

13 Wall. 581, Blyew v. U. S., and I might quote a part of that case in which the court says:

> "It would seem rather to have been to afford protection to persons of the colored race by giving to the Federal Courts—"

They are speaking of the intent of the Statute, and they were referring to an earlier version of this particular statute which reads similarly, as it does today.

> "—by giving to the Federal Courts (20) jurisdiction of cases the decision of which might injuriously affect them."

Referring to those persons.

> "Either in their personal, relative or property rights whenever they are denied in the State Courts any of the rights mentioned and assured to them in the first section of the act."

Now, the case goes on to elaborate on that point. This is the essential point that establishes it, it has certain interesting features in it, which are pertinent and which we can discuss properly at length.

We might suggest that the more recent decisions of the U. S. Supreme Court are in conformity and consistent with this early opinion, and with some of the earlier opinions which were made by the United States Supreme Court with regard to the Statute.

Now, of course, we all know Monroe v. Papp, in which the Court has said—

The Court (interposing): Well, in order to shorten this a bit, do you have any objection to Mr. Sullivan's request to take the testimony of Lucy Andrews with respect this lawsuit? I am not talking about the prior occasion involving the principal suit.

Mr. White: Well, I should say, your Honor, (21) that I believe that a motion as made here can be decided on the basis of what has been presented, without the necessity of testimony. I, of course, fail to see how any facts in support of the defendant's position with regard to present matters can be of any avail, in view of the fact, as I understand the motion for summary judgment is to determine whether or not there are facts in dispute and once finding that there are facts in dispute, that then the Court is suggested to deny the motion rather than to have a trial.

The Court: Well, of course, if they are basic to the question of law, yes, but here it is argued that in light of your own complaint that there is no cause of action, assuming it to be true. At least that is my position when I was quoting you Kenny against Fox.

Mr. White: With regard principally to the Kenney decision? I think—does the Court—

The Court: (interposing): I have in mind, and only in mind the laws against judges and the assertion therein that that Civil Rights Section does not apply to judges.

Mr. White: Well I might refer the Court then to an early United States Court decision, well known in the—In Virginia, in which the Court took action under the Civil Rights Statute against a judge in which—(22) in a case in which the lower court had excluded negroes from the jury and this had been established, and the Court, under the Civil Rights Statute—

The Court (interposing): Set aside the case. All right, go ahead.

Mr. White: All right. I think the Court is familiar with it, I think it is Virginia v. United States.

There are a number of cases in which this has been done, in which the Federal District Court has been upheld by the Supreme Court in intervening—not intervening, because as the Court said in Monroe v. Papp, these remedies are supplementary to any actions or remedies ordinarily found in the State Courts, or in general jurisdictions. These remedies are supplementary. And in addition to other remedies, I think with regard to that point I feel that that is the main question, that I can state that a brief would clearly establish this question of the differences between the damage-type action and the action for declaratory or injunctive relief either.

Declaratory relief would be, no doubt, as sufficient as injunctive relief, and clearly, of course, a declaratory relief has been customarily used within recent times by the Federal District Courts.

With regard to that point, I feel assured, (23) beyond question, on the cases that I have examined and would be able to clearly present to the Court that this distinction has been made, and that the actions of this type have been allowed to proceed.

I might say also with regard to the request of defendant for summary judgment, the affidavit would not seem—that they had filed—would not seem to found properly a basis for a grant here, in view of the fact that no part of the affidavit has been made on personal knowledge of the defiant and it has not been affirmatively alleged that the defiant would be able to testify to the matters alleged in the complaint and I am sure the Court is familiar with those affidavit matters which are not based, by the Court Rule on personal knowledge or not been recognized in any manner by the Court.

The Court: Well you are talking double-talk to me, because what I want is something specific.

Mr. White: Yes, your Honor.

The Court: And I haven't gotten it from you yet.

Mr. White: What is that, your Honor?

The Court: And that is the allegation or what you intend to use to prove that there was racial discrimination—

Mr. White (interposing): Racial (24) discrimination.

The Court: —here involved in this case, from the transcript.

Mr. White: Yes, I will show from the transcript, and I will say that there were remarks made to me—

The Court (interposing): Reading from the case as—or just the syllabus, I haven't read the case, because I haven't had a chance, it is noted that the Court held there was no abuse of discretion. There is no substantiation of—the issue was never—of racial discrimination was never raised in that case. At least in the Michigan Supreme Court, and that this is the first time it has been raised, is the filing of this case, and it was as I see it, the denial of the motion for continuance, as the Court said—and as apparently claimed by you on your appeal—was this alleged disabling illness of yourself.

And the Supreme Court said that:

> "* * * under the record showing course of conduct justifying trial Court's observation and motion has been filed only for purpose of delay, the motion which had been made the day before was not supported either by medical affidavit or testimony."

(25) Mr. White: Yes, your Honor.

The Court: I am just reading from the syllabus, not going into the facts, because I haven't had a chance.

Mr. White: And I might say the Supreme Court—

The Court (interposing): You had your day in court on that, now you come in here and ask—on a racial basis and I want to know what basis, if any, you have proof of that—on that subject, or I might consider if this is merely a—as counsel seems to infer in his answer, if this is based on something else, where he asks that I—that he suggests disciplinary action. I am merely interrogating you along those lines to see whether or not this has motive. Yourself I am talking about personally.

Mr. White: Yes. You want to see what, your Honor, I didn't hear you?

The Court: I wanted to know what your basis is for alleging racial discrimination, that being the basis for your whole suit here, and there is no proof. You have no proof with respect to a racial discrimination; I want to know that too, so that is what I want to know, where you going to prove it and how you are going to prove it; through whom you are going to prove it. I am entitled (26) to know that, this is a civil case, not a criminal case.

Mr. White: Yes. I am attempting to find the remark. I will in just a second.

The Court: Quoting from whom?

Mr. White: Quoting from Judge O'Hara.

The Court: All right.

Mr. White: Of course, I might say too, that this transcript should be looked at in a whole in order to see a remark like that. I mean to take a remark completely out of context and it is out of context—

The Court (interposing): I understand.

Mr. White: And I think that this is a transcript, in a whole, leading up to something that I think—I am convinced of.

Now, I don't say that there was a blatant or an attitude which—of race which we find in other areas. I am saying, and I will show by the testimony of people who, as well as myself, were involved in this case, as well as those who have had experience in these areas, that the actions which were taken here would reasonably have a relation and lead a reasonable mind to conclude that there was a tinge of the racial attitude. As I say, an attitude which is a part of the second-class approach which Negroes have experienced for so often, and which is a part of the disregard, general (27) attitude of disregard that we have seen. I think it will be shown in the transcript, in the evidence, and I say transcript—

The court: (interposing) Let me see it. Let me see it.

Mr. White: —and in the evidence which we will present, I think that a reasonable mind would conclude that these matters in conjunction with the dismissal and the circumstances of that dismissal would properly lead one to suggest that an attitude of discrimination was involved. And, as I have stated to the court, we also have the position that the difference—the differential if marked enough and if in a sensative enough area between the treatment of a negro litigant and a white litigant is enough to found an action under Section 1981 to be brought in Federal District Court.

We strenuously urge this interpretation as being a clear interpretation of the statute, and one in conformity with previous decisions of the United States District Court—United States Courts as well as the United States Supreme Court as well as other Federal Courts.

The court: You don't need to discuss that with me, because we are not in issue—the issue isn't on that point, because I perhaps agree with you, as does Mr. Sullivan.

(28) Mr. White: I might say also that racial remarks were made to me—

The Court (interposing): Where is there a racial remark in that which you have shown me on the transcript on page 14?

Mr. White: At the middle—at about the beginning of the last third, the court, at the end of a statement began to make reference to "you people." In fact, I think he said "you people"—

The Court: (Interposing) He didn't say—I see, he is referring—discussing certain motions.

Mr. White: Yes. There is no question but what he was referring to negroes, talking to me; he was referring to a general pattern. This is an expression which we are very familiar with, and one which in some part—

The Court: (Interposing) The quote is: "I wish some of you people would practice law," end of quote.

Mr. White: Yes. And I think there was going to be connected to that, which—but the expression was cut off at that point by the court, but I think that the—there was no question, under the circumstances, that this was to be a slur, and that it was a part of the entire proceedings, which I think the court will find we (29) wouldn't be here, this is a very difficult and delicate action, and we certainly wouldn't be here unless we thought that we had good concrete basis which would be acceptable to the minds of a Federal District Judge; we knew that we are not dealing with a jury, but with a judge and we felt that there was enough in it.

Now, I might say with regard to the racial elements, and I do want to re-emphasize to the court that we do not necessarily feel that intent has to be shown by that statute, or by the interpretation of the statute, but that it can be— that the statute can be operative when here is a substantial difference in a critical area such as the life of the lawsuit; such as the right to access to court between—

The Court: (Interposing) I am sure that you have all those rights, there is no dispute, you needn't argue them here, and this would be the first court, along with others, who would go right along with you, but that isn't the issue as I see it.

I am particularly concerned, because it was never raised before; there was no intimation of it before.

Mr. White: Well I might say to that, your Honor, that our view of the law that we found when we took the case to the Supreme Court was such that they—we didn't expect that there would be any other conclusion than that was inconsistent with our view on the cases which are submitted; on the cases which we submitted.

The Court: Don't have anything to do with civil rights?

Mr. White: No, they didn't.

The Court: Or any violation of any racial discrimination?

Mr. White: No, none of those we submitted. That is quite true. And, as a matter of fact, it would, as a matter of fact, be a reason for not holding that the Supreme Court decision would be a matter of binding on the issues here, because there is a different issue here that is set forth in the affidavit, I think, that the defendant claimed are the issues here at there.

The Court: Are you satisfied then from the pleadings as they are at hand that the court is in a position to rule on this motion?

Mr. White: When the court says "in a position," does it mean that it wouldn't need any further argument or—

The Court: (Interposing) Testimony. I made inquiry of you whether or not any testimony—if you had any objection to Mr. Sullivan's request to take the testimony of Lucy Andrews?

(31) Mr. White: Well I should say, your Honor, that it would seem that this would be—

The Court (interposing): Dangerous?

Mr. White: —this would be a—actually amount to a trial here on a motion for summary judgment; a trial to determine what we already set up in our affidavit, that a fact issue does exist, but this would appear to be actually a trial here to go into that, because, of course, we would have to then put on our evidence, and I can't see exactly what this would avail insofar as the decision on the motion is concerned.

The Court: Well this is a very serious charge against Judge Murphy, or against the Bench, and I am hesitant to proceed in a merely name-calling contest.

Mr. White: Well it seems depositions could be—would be in order, or interrogatories or any of the usual matter which would be brought, and then if the Court wanted testimony, then, of course, this would be in order, but it would seem to have piece meal part testimony, we would have to then go—put in testimony, and we would have a trial here actually, it would seem to us.

The Court: Mr. Redfield.

(Whereupon, a conference was had at the Bench between the Court and the Law Clerk, outside of the (32) hearing of the Reporter.)

The Court: Since I have given you so much time, I have another matter here, I would suggest—I haven't seen the affidavit that has been filed by yourself, but I would suggest that this matter—that you submit briefs in this matter, and I want covered particularly all the points that have been raised, but in addition, this in substance, as I see it, is a motion to vacate the Supreme Court's—the Opinion and Order of the Supreme Court, and I want covered too the proposition of whether or not it can now be raised here, where the issue had never been raised before.

In general, the complete brief on the—your right to continue it here, and the Court's jurisdiction in the matter, and I want to know too, have your brief cover the doctrine of judicial immunity, of course, although your relief is not in damages, as I know it now.

Anything further you wish to say, Mr. Sullivan?

Mr. Sullivan: Yes, your Honor, I actually feel sincerely that this matter is dispositive today, because our motion for relief is based on the fact that he claims racial prejudice, and in support of that he filed as Exhibit A a transcript of Thomas Murphy, there is not one iota of remarks in there that would even in the (33) farthest stretch of the imagination relate to the colored people or the white race.

Now, secondly, in there he omitted the transcript of Judge O'Hara, and all Judge Murphy was doing was entering what the Executive Judge told him to do; that was to dismiss the case, and if there is an appeal to anyone, it should be against Judge O'Hara and not Judge Murphy.

But secondly he omitted to furnish this Court with the actual transcript of Judge O'Hara, which he also omitted from his brief to the Supreme Court, which I had to supply, and I think this is dispositive of this as to whether or not this was directed against the colored people, or against Mr. White.

If the Court will permit me this, on that date that Judge Murphy sent the case up to Judge O'Hara, because Mr.

White wanted a continuance, Judge O'Hara said to him, and I am quoting from page 23-A of the brief and appendix for the appellant—I will correct that, he did include this on the—on his brief, and this is it, and the Supreme Court had this in front of them when they ruled. This is to Mr. White. "The Court:" Judge O'Hara speaking on May 2, 1961. "Mr. White, this Court has had nothing but trouble with you since you came into this case starting the date you came in, right up today. I told you when (34) you were here before you took the matter to the Supreme Court, that the case was on the call and would be tried when it was reached. At the request of the Supreme Court Clerk I adjourned the case so that it could be heard by the Supreme Court a week later when they came in for conference on the 26th of April, so that would be the week of the 17th and sometime during that week, possibly the 19th or 20th. I also told him that to make sure that we would comply with whatever the Supreme Court did in your case that I would put it over until May 2d. I would not take it off the call and I would not put it over the term, but I would put it over until May 23d, giving the Supreme Court ample time to pass upon your problem. If they said that it should go over further we would put it over in accordance with whatever they say. If they didn't, the case would go on for trial on May 2d or whenever assigned thereafter, and I told you that right here in this courtroom. You have known that ever since. You have deliberately stalled in my estimation ever since you have been here. You may be sick, you don't look it to me; you don't look any different to me than you have on the thirty or forty times you have been here, not a particle. You can try this lawsuit, you are assigned and you will try the lawsuit or you can dismiss it or take a non-suit, if they will let you. I don't (35) know whether they will let you, they don't have to, under the rule. You will try the lawsuit, there is no doctor's certificate here, I have no proof, I don't want to tell a lawyer I don't believe him.

"Mr. White: I have an affidavit here that I will file with the court.

"The Court: You bring your doctor in here, I will take no affidavit in your case. You bring your doctor in here before me, I will put him under oath and I will ask him, because you have known all the time that your case would go on on the 2d and this is now the 3d, this is no surprise to you, this is just another dodge in my humble opinion to get out of trying a lawsuit and get it over. This is one of your angles. I hate to talk to a lawyer this way, but I think you have it coming to you. I have never had so much trouble with a lawyer in my life as I have had with you. Go down to Judge Murphy, I don't care what he does with you, I won't give you one minute."

Now I think, your Honor, that that is dispositive of our motion for summary judgment. He has filed the affidavit of Judge Murphy, which merely said I will comply with the executive order of the Circuit Court.

In support of his racial discrimination claim against Judge Murphy, he attaches the affidavit of Judge Murphy —the transcript of Judge Murphy which says nothing about race, creed, color or religion or anything else. And Judge Murphy was acting on this terminology that I just read from Judge O'Hara, and it was directed against Mr. White personally, not as a colored person, but as an officer of the court with which the then executive judge of the Wayne Circuit Court said, "I have never had so much trouble with a lawyer in my life."

Now, your honor, his clients are sitting here in court today, Lucy Andrews, the person allegedly bringing this complaint. To me it is a very serious charge for an attorney to raise racial discrimination against a jurist of this court, or of the Wayne Circuit Court, and I want to take testimony from his client and from Mr. White to find out what this evidence is, where he accuses the Circuit Court Judge, now the Executive Circuit Court Judge of racial discrimination, where there is not one word or one iota. The remarks were addressed to Mr. White for his conduct before that court and not for anything else. And it makes no difference whether he be Catholic, Jew, Protestant, Chinese, white or colored. And that is why I think that these matters are so serious that Mr. White's right to practice before this court or any other court should now be scrutinized by the court.

The Court: Well, what does the affidavit say that you have just received? I haven't seen it.

Mr. White: The affidavit—I have it.

The Court: Is the original filed?

Mr. White: The original is filed, yes. You see, your honor, we feel that if an action is taken—as I say, an action in a category—we don't mean all actions by any means, all decisions or anything else, but not only those actions enumerated in the statute, but those critical actions which involve the life or death of the lawsuit, when those actions are taken and there is basis for saying—taking just the negro or a minority I don't think the statute deals basically it is a question of minority, majority problem, although it is couched in terms of whites and nonwhite, I think basically it is that and it has a utility far beyond the particular problem it is meant to deal with, because of that, but where there is a marked difference—a significant difference, and there is the element of race, where this action is taken against a negro, then this statute says, under its terms a court can decide and can give relief because of the problems well known which this statute was enacted to remedy.

The Court: In other words, your contention is whenever an action is taken against a negro under the situation where an adjournment is denied, that the inference immediately arises is by reason of discrimination?

(38) Mr. White: No. No, not by any means.

The Court: That is what you are saying.

Mr. White: No, I think you said adjournment, no doubt you meant the dismissal.

The Court: Yes.

Mr. White: Where the circumstances of the dismissal—

The Court: (Interposing) As I recall, I just had somebody else in here where I dismissed a case, Mr. Zisman, I don't think he was negro, so—the case of Kenney against Fox does not involve negro.

In other words, the case in and of itself substantiates the civil rights act, that is, the doctrine of immunity under the civil rights act as set forth in Kenney against Fox, does not involve negro, to indicate that you might wish a preference by way of it is something else.

Mr. White: No, I don't think—

The Court: (Interposing) And I regret it if you are using it as a crutch, because that's not fair either.

Mr. White: No, we—racial remarks were made to me by persons involved in this case at the very inception of my coming into it. There is—

The Court: Oh, I can understand that if there was a white lawyer, that there might be some racial remarks made by the parties there involved. I can understand it happening, I should say, but I don't know as that would affect the thinking of Judge Murphy or Judge O'Hara, and from what I understand of the transcript the one who directed no adjournment was Judge O'Hara; obviously you can't sue him, because he has since died. And all I know is that the rules—it has been sometime since I have been in Circuit Court—the rules require that the adjournment must be received—must be approved by the presiding or the executive judge, and that the trial judge merely carries out what the executive judge instructed him. Am I correct in that, Mr. Sullivan?

Mr. Sullivan: Yes, your honor, and in the transcript of the Supreme Court, I believe in the one that plaintiff has filed here as Exhibit A, Judge Murphy read him the rule and quoted it, said I have no power to grant you a continuance; I must dismiss it or try it, and if the executive judge says he won't grant you a continuance, I have no alternative.

The Court: Now how are you going to beat that?

Mr. White: Of course, our objection is not to the grant or the denial of an adjournment. We (40) did not question the right of the court to grant or deny an adjournment, this was not a fundamental part.

The Court: Well we have taken almost an hour, plus. I will adjourn this matter for two weeks for the—submit a short brief or a long, anything you wish.

Mr. White: Fine.

The Court: That gives me authority to hear this case in the light of the facts as they are here before the court. As of today I don't think taking any testimony would be dispositive of this thing.

So I will adjourn this matter for two weeks and which means if you have no briefs in here I want you both here on that date to further argue this case. If there are briefs filed, the court will dispose of it at that time.

Mr. White: I see. I will file a brief.

The Court: A week for you, and a week to answer.

Mr. White: Then if we do, we would await the court's word, after filing the brief about a hearing?

The Court: All right. You understand, a week; all I want is some authority. A week to answer.

(Whereupon, the motion was adjourned.)

(41) I, Joseph J. Gondol, official court reporter in and for the United States District Court for the Eastern District of Michigan, Southern Division, do hereby certify that I recorded stenotypically the proceedings had in the above-entitled cause, before the Hon. Fred W. Kaess, district judge, at Detroit Michigan, at the time and place hereinbefore set forth, and that the attached forty (40) typewritten pages is a full, true and accurate transcript of the proceedings had thereon.

In witness whereof, I have hereunto set my hand at Detroit, Michigan, this 23rd day of October, 1964.

Joseph J. Gondol,
Official Court Reporter.

SUPREME COURT OF THE UNITED STATES

October Term, 1965

LUCY ANDREWS - Petitioner

v.

THOMAS J. MURPHY - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Harold L. White
6339 14th Street
Detroit, Michigan 48208

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SUPREME COURT OF THE UNITED STATES

LUCY ANDREWS,

Petitioner

NO.

vs

THOMAS J. MURPHY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner, LUCY ANDREWS, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled cause on July 30, 1965.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (Appendix A, Infra, pp. 15-19) is reported in 349 F 2d 114. The opinion of the United States District Court for the Eastern District of Michigan, Southern Division (Appendix A, infra, pp. 20-21) has not yet been officially reported.

JURISDICTION

The judgment of the Court of Appeals was dated and entered on July 30, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

The Court of Appeals for the Sixth Circuit affirmed a judgment of the District Court of the United States for the Eastern District of Michigan, Southern Division, granting respondent's motion for summary judgment where petitioner's Complaint, under the Civil Rights Act (42 U.S.C., Section 1981 and 1983) for declaratory judgment and injunctive relief alleged that the dismissal by the respondent, a state court judge, of a state court tort action violated the federal constitutional and statutory rights of the plaintiff. The questions presented are:

I.

Where a Civil Rights action alleges a violation by a state judicial officer of rights contained in the Fourteenth Amendment to the Federal Constitution and Title 42 U.S.C., Section 1981 and seeks only declaratory or injunctive relief and jurisdiction is based on Title 28 U.S.C. Section 1343 (3), (4), Section 2201 and Title 42 U.S.C. Section 1983, is it proper for a Federal District Court to decline to accept jurisdiction thereof or hear the matter?

II.

In a civil rights action under Title 42 U.S.C. Section 1983, claiming a violation of rights contained in Title 42 U.S.C. Section 1981 or the Fourteenth Amendment, is plaintiff required to allege or prove intentional or purposeful discrimination or racial prejudice?

III.

Is a defendant's motion for summary judgment properly granted where the motion is based on a supporting affidavit that is not sworn to by affiant as being on his personal knowledge and where material facts are in dispute?

STATUTES INVOLVED

The following federal constitutional and statutory provisions, set forth in Appendix B, are involved in this case:

Article VI, Constitution of the United States; Fourteenth Amendment to Constitution of United States; Title 42 U.S.C., Section 1981 and 1983; Title 28 U.S.C. 1343 (3), (4); Title U.S.C. Section 2201.

STATEMENT

This is a civil rights action alleging that the dismissal with prejudice (Pet. App. 5a-8a)** of petitioner's action in state trial court by the respondent, a state trial judge, is in violation and deprivation of her rights under the Fourteenth Amendment and her rights under Title 42 U.S.C. Sec. 1981. The complaint asks the Court for general relief and to declare the rights of the parties, to declare the dismissal to be in violation of petitioner's dismissal action and restrain respondent from preventing petitioner's lawsuit from proceeding to trial according to law. (Pet. App. 2a).

Petitioner had appealed respondent's action of dismissal to the state's highest court, the state Supreme Court, which affirmed the action taken but did not pass upon the Fourteenth Amendment challenge brought to its attention. Petitioner's rights under Title 42 U.S.C. Sec. 1981 were brought to the State Supreme Court's attention on motion for rehearing, but were not passed upon.

Without answering the Complaint in District Court, respondent filed a motion for summary judgment (Pet. App. 9a-10a) stating that there was not dispute about the chronology of events and the factual matters of the complaint, which motion was supported by an affidavit (Pet. App. 13a) which itself was not sworn to by affiant as being on his personal knowledge. Petitioner filed an affidavit (Pet. App. 14a-15a) in opposition to respondent's motion controverting the material allegations made therein.

At the hearing on said motion for summary judgment, petitioner's counsel stated that evidence was available in support of the complaint of discrimination. (Res. App. 6b, 8b, 15b). The District Court indicated, toward the conclusion of argument, that perhaps its main concern was with the Court's authority or jurisdiction to hear the case and that he did not think the taking of any testimony would be dispositive of the case as of that day. (Res. App. 19b, 23b). Respondent's counsel stated to the District Court that the respondent made and entered the dismissal of the state action because he was told to or ordered to by another judge, the executive judge of his court. (Res. App. 19b, 21b).

The District Court granted respondent's motion for summary judgment on July 6, 1964, (Res. App. 16a) and the Court of Appeals affirmed that action by its decision of July 30, 1965, its opinion stating that it could not find any justification for the charges of racial discrimination, that its view of the record compelled the conclusion that petitioner's case was dismissed in the state court because of the dilatory tactics of her attorney and his failure and refusal to proceed with the trial, that in dismissing the action, respondent merely followed the directions of another judge, the executive judge of his court, Executive Judge, Chester P. O'Hara, and adding that, furthermore, state judicial officers are immune from suit under 42 U.S.C. Sec. 1983. It may be noted, in the view of petitioner, that neither Judge O'Hara (Res. App. 11a) nor the respondent (Res. App. 5a-8a) nor the State Supreme Court (Appendix C) has specified exactly what in the state court proceeding was viewed to constitute the charge of dilatory tactics, or what specifically in the state court proceedings "amply justified" the dismissal.

** Reference designated "Pet. App." are to the appendix to Petitioner's brief as appellant in the court below, those designated "Res. App." are to the appendix to the respondent's brief as appellee in the court below.

REASONS FOR GRANTING THE WRIT

This case presents questions and issues of special importance. It presents a question of federal law which appears to be considered as not having been settled, but which should be settled by this Court at this time. It presents a question decided by a Circuit Court of Appeals in a way probably in conflict with applicable decisions of this Court and in a way which conflicts with decisions of other Circuit Court of Appeals on the same or similar questions.

CONTENTION

I

WHERE A CIVIL RIGHTS ACTION ALLEGES A VIOLATION BY A STATE JUDICIAL OFFICER OF RIGHTS PROTECTED BY TITLE 42 U.S.C. SECTIONS 1981 and 1983, AND SEEKS ONLY DECLARATORY OR INJUNCTIVE RELIEF, IT IS NOT PROPER FOR A FEDERAL DISTRICT COURT TO DECLINE TO ACCEPT JURISDICTION THEREOF OR TO HEAR THE MATTER.

The decision of the Court below was to the effect that it was not authorized to entertain or give redress in such an action, relying on Kenny v. Fox, 232 F. 2d 288 (C. A. 6).. However the Kenney case can be distinguished from the instant case on several points.

The plaintiff there sought damages as well as declaratory relief and the reasoning of the decision, insofar as it pertained to the doctrine of judicial immunity, to which point it was primarily addressed, applies only to the claim for relief in damages. The doctrine of judicial immunity means immunity from civil liability for damages and does not apply to the other avenues of relief, such as the declaratory or injunctive relief sought here. Enerson and Haber, Political and Civil Rights in the United States, 2nd Ed., p. 86; Rhodes v. Houston, 202 F. Supp. 624, affirmed, 309 F2d 959, certiorari denied, 373 U.S. 909.

The plaintiff there sought declaratory relief but only in respect to a judgment of a state court which was essentially one made on the merits, whereas, the dismissal here came independently of any consideration of the merits.

The plaintiff there did not proceed under Section 1981, but generally under Section 1983. As between the two Sections, there may be no significant difference with regard to the immunity doctrine or in any other respect. However, any detailed examination of Section 1983, its background and language insures the conclusion that redress against state judicial officers was intended to be afforded, and made practical and effective, to achieve the broad and demonstrably important remedial purposes of that part of the legislation. Strauder v. West Virginia, 100 U.S. 303; Gibson v. Mississippi, 162 U.S. 565; Hague v. CIO., 307 U.S. 496.

It is not necessary to review the logic of Kenney v. Brandhove, 341 U.S. 367, relied on by the Court in Kenney, on the immunity of legislators in order to distinguish it from the immunity of judicial officers. It is unnecessary to consider whether problems sought to be remedied, the intent of Congress and the language used in Section 1981 and Section 1983 suggests that legislators were to be included within the scope of their provisions. But in the case of judicial officers, no other conclusion, but that they were to be included, offers itself. United States v. Rhodes, 27 Fed. Cas. 785 (Cir. Ky.). Furthermore, Kenney v. Brandhove, supra, involved a suit for damages, and even the application of the legislative immunity doctrine in that regard was made with caution.

In addition to those elements of distinction, the distinction, the holding in Kenney and the decision in the Court below is in conflict with decisions in point from other Circuit Courts of Appeals. In Harmon v. Superior Court, 307 F. 2d 796 (C.A. 9), a civil rights action against state judicial officers of trial and appeal court level and others, the Court stated: "Appellant has attempted, however, imperfectly, to state a claim under Acts of Congress that expressly give the District Court jurisdiction. That Court then had jurisdiction." The Court continued and further declared: "The right to a hearing on the merits of a claim over which the Court has jurisdiction is of the essence of our judicial system and the judge's feeling that the case is probably frivolous does not justify by-passing that right. Appellant is entitled to have process issued and served, and to be heard." (Emphasis added) The Ninth Circuit did not reach the immunity question. But the absence of any significant suggestion of hesitation may well be an indication of that Circuit's tenative disposition on that question.

Injunctive and declaratory relief was awarded in a Civil Rights Act suit against a police magistrate, city council and others in Adams v. City of Park Ridge, 293 F2d 585 (C.A. 7), where the Court also distinguished an action for damages from an action for declaratory relief, in relation to the governmental immunity doctrine. The ruling in Progressive Development Corp. v. Mitchell, 286 F2d 222 (C.A. 7) is also notable on this question.

Picking v. Pennsylvania Railroad, 151 F2d 240, a Third Circuit Court of Appeals decision has been often referred to and discussed since its rendition. It held that, to the extent of the Act, Congress intended to abrogate absolute privilege conferred by common law upon judicial officers, and permitted an action for damages thereunder to proceed against a judicial officer and others. The expectation that the decision meant something other than what the language stated has not been realized and the Court later stated in Ginsburg v. Stern , 225 F2d 245, where it found that a plaintiff had not properly stated a Civil Rights Act claim, that: "We refrain expressly, however, from any determination as to whether the Picking decision has been overruled by Tenney v. Brandhove," supra.

With the same perceptive regard for this legislation, which came out of great sacrifice, and which offered a perhaps unparalleled guide for the future in establishing the principle of a dominant group's obligation to extend effective civil protection to a minority group, the Third Circuit approved the retention of jurisdiction by the District Court, with abstention to await state relief, where an injunction was sought against a state judicial officer. Cooper v. Hutchinson, 184 F2d 119; Paul G. Kauper, Frontiers of Constitutional Liberty, 1956, pp. 193-229.

The Tribune Review Publishing Co. v. Howard Thomas , 153 F. Supp. 486, 490, is one of the increasing number of cases which approach this area of the law, not from the standpoint of questioning whether the federal court is encroaching on state authority, but whether the state authority is denying, interferring with or encroaching upon rights guaranteed and protected by the Federal Constitution. There, the District Court held that it had proper jurisdiction to enjoin enforcement of a state court order "and the power to issue appropriate orders against state action where orders or action is taken by color of state authority to deny or interfere with said Federal rights."

The early cases, dealing with early versions of the present Sections 1981 and 1983, all reflected what was the understanding then, while the history of these enactments was still fresh, that their major ~~[illegible]~~ AIM was the securing and maintaining of the equal rights of the Negro in and before state courts. For as was said in

United States v. Rhodes, 27 Fed. Cas. 785, (Cir. Court, Ky.), at p. 787, "Courts and juries were frequently hostile to the colored man, and administered justice, both civil and criminal, in a corresponding spirit."

This Court seems to have approached this question, or aspects of it, in Blyew v. United States, 13 Wall 581, in which both the majority and the dissent recognized that the primary intent of the early versions of the present Sections 1981 and Section 1983, substantially in the same form now as they were then, was to afford protection against invidious state judicial action. The Court stated, at p. 593: "It is also well known that prejudices existed against the colored race, which naturally affected the administration of justice in the state courts and operated harshly when one of that race was a party accused. These were evils doubtless which the Act of Congress had in view, and which it intended to remove." The dissent, referring to an early version of the present Section 1981 stated, at p. 596: "This is the fundamental section of the Act. All that follows is intended to secure and vindicate, to the objects of it, the right herein declared, and to extablish the requisite machinery for that end." (Emphasis added)

To maintain that Section 1981 cannot be used to afford protection against state judicial officers if, and when, they violate its provisions is not merely to vitiate it, but is tantamount to declaring it non-existent. In Hurd v. Hodges , 162, F2d 233, Judge Edgerton wrote, in dissenting (later vindicated in Shelly v. Kramer, 334 U.S. 1), at p. 241: "A statute (referring to 42 U.S.C. Sec. 1982) which declares or confers a right means, if it means anything, that courts shall recognize and protect that right." Yet there are few statutes the need for whose affirmance is more great or more urgent. Lusky, Racial Discrimination and the Federal Law: A Problem in Nullification. Col. L. Rev. 1163, 1963; Wechsler, Federal

Jurisdiction and the Revision of the Judicial Code, 13 Law and Contemporary Problems, p. 213, 230.

The problem which these enactments attempted to deal with has now been amply documented. Observations such as the following are now common place:

> "What is also sobering is the magnitude of the injury inflicted upon Negro Americans by the events recorded in this historical review. It is reflected in the poor education, low income, inferior housing, and social demoralization of a considerable part of the Negro population. What compounds the problem is that these unfortunate results of slavery, discrimination, and second-class citizenship are in turn used by some more fortunate Americans to justify the perpetuation of the conditions that caused the injury."
>
> Report of the United States Commission on Civil Rights. 1959, at p. 16.

It may be regrettable that the Negro's status is repressed, but it is inordinately pernicious that his status in and before courts of law anywhere be anything less than full, equal and balanced with that of the general populace.

Yet there remains division of mind and precedent upon what resources are available for its resolution, and uncertainty as to what additionally may be needed. It would seem that a problem of such disensions, historical relevance and importance to these times should be examined and explored at every reasonable opportunity, such as the one afforded here, for whatever light may thus be shed on it and on the larger conflicts of our times, between the ethics of religion and science on the one hand and ignorance and superstition on the other.

CONTENTION

II

IN A CIVIL RIGHTS ACTION UNDER TITLE 42 U.S.C. SECTION 1983, CLAIMING A VIOLATION OF RIGHTS CONTAINED IN TITLE 42 U.S.C. SECTION 1981 OR THE FOURTEENTH AMENDMENT PLAINTIFF IS NOT REQUIRED TO ALLEGE OR PROVE INTENTIONAL OR PURPOSEFUL DISCRIMINATION OR RACIAL PREJUDICE.

The court below stated that there was no showing of racial discrimination; that the dismissal was justified by dilatory tactics and failure and refusal to proceed to trial on the part of the petitioner's counsel.

However, the statements in Monroe v. Pape, 365 U.S. 167, 173, and 184, may well be definitive on this question:

> "***allegations of fact constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to that extent the requirements of Section 1983."
>
> "***Section 1983 should be read against background of tort liability that makes a man responsible for the natural consequences of his act."

As to the due process requirements of the Fourteenth Amendment, the District Court might be in a position in a proper case to be able to find from the Complaint that there was no deprivation. But the test of the equal protection clause, perhaps, and of Section 1981, most certainly, can only be seen upon the production or failure to produce evidence showing inequality of treatment. The District Court cannot know or be presumed to know whether "in the same or similar circumstances" other or white ligitants are treated differently. The District Court can only find that out when, and if, evidence is produced on the point. That evidence, when produced may show enough to raise inferences of disparity, difference or discrimination in the particular premises. It, on the other hand, may not show enough to do so. But it is to overlook the language, intent and history of the statute to say there has been no discrimination, even before evidence comparing treatment can be introduced.

The dismissal in state trial court in the instant case was so far contrary to customary and regualr procedure, there is little in the way of recent precedent with which to begin a consideration of it. Two cases have appeared McBride v. Gowan, 80 Okla, 72, 194 p. 208, and Sykes v. Blakely, 215 N. C. 61, 200 S.E. 910. In the latter, at p. 209, the Court noted in reversing the trial court dismissal: "While it is true the motion for a continuance alleges that the plaintiff could not proceed to trial without the presence of the plaintiff, yet the only question presented to the Court upon the motion for continuance was whether the motion should be sustained or overruled, and when the Court overruled,the same, the motion was disposed of, and nothing more. If, after overruling the motion, the record would disclose the case was called for trial, and the plaintiff refused to offer the testimony the Court then would have the right to dismiss the case, but the record is silent as to any such proceeding. The record does not disclose that the plaintiff re refused to offer testimony nor does the record disclose the case was ever called for trial. The record simply disclosed that the Court overruled the motion for continuance and dismissed the petition."

Similarly, in Hovey v. Elliott, 167 U.S. 409, 416, this Court approved of a view which, at least since its pronouncement, became considered as well established: "It is against every principle of justice that judgment should be pronounced, not only without giving the party an opportunity of adducing evidence, but without giving him notice of the intention of the judge to proceed to pronounce the judgment." (Emphasis added)

However, in any event, to say that the dismissal was justified, whether that justification is attributed to dilatory tactics and failure and refusal to proceed, or to some other cause, is beside the point. What the statute, Section 1981, is concerned with is whether the actions taken against the person or the rights accorded him are the same as are accorded to or enjoyed by white persons, under the same or similar circumstances. The purposes and functions of the

As to the respondent having had no contact with the petitioner, this agin is not the pertinent issue, Obviously one does not need to have contact with a person to have knowledge about him. Whether respondent had knowledge of petitioner and to what extent are the more pertinent queries. Nevertheless, such considerations would seem to be hardly more than peripheral.

As to the Court of Appeals' observation that the respondent, in dismissing the action, was merely following "the direction of the executive judge of his court," a matter difficult of approach is presented. First, under Local Court Rule 6(b), "Whenever a case has been assigned to a judge for hearing, trial or other disposition, such judge shall have exclusive jurisdiction to finally adjudicate such case." (Emphasis added) The state court action was indeed assigned to respondent. (Pet. App. 12a). Thus, respondent had exclusive jurisdiction to finally adjudicate the case. Now, if, as we are now told, this turn of events being related for the first time, by respondent's counsel at the District Court hearing (Res. App. 19b), respondent not only shared this jurisdiction, made it non-exclusive, but abdicated it to the control of another judge, the executive judge, one who had no more authority as regard this state of affairs than any other judge of the same court, his status as executive judge notwithstanding, respondent not only thereby acted, or failed to act, contrary to the aforesaid Local Court Rules but contrary to what must be considered the essential principles of the judicial process. There is no provision of the Local of the State Court Rules known to petitioner which in any way authorizes, provides for or sanctions what respondent's counsel, in the stress of advocacy, admitted.

Second, it is true, that under the then existing State and Local Rules, the executive judge had control over the assignment clerk, whose office assigned cases, and assigned the case in question, for trial, but that power by no known means, or any means approved by law or custom, extended to ordering or even telling a trial judge to dismiss a case which has been assigned to him.

In any event, such orders, instructions or directions should not be approved when so covert as to not be made known save through an inadvertence in the fact-finding forum of federal district court. Nor, indeed, when, in fact, directly contrary to the last known expression of position of the executive judge (Pet. App. 13a): "Go down to Judge Murphy. I don't care what he does with you.***

It may be noted that the following different conclusions, characterizations and observations, quoted from the record, have been found or given at different times as to the reasons for, explanation of or in description of, the same, single occurrence,i.e., the dismissal of the state court action: a) "So the only thing I can do, if you are not _able_ to proceed" (Pl. App. 8a): b) "Upon his claimed inability to proceed with trial," (Appendix C): c) the dismissal "was predicated _solely_ upon plaintiff's attorney, Harold L. White, refusing to conduct himself in accordance with the Court Rules," (Pet. 10a): d) all respondent was doing "was entering what the executive judge told him to do; _that was to dismiss the case,_ and if there is an appeal to anyone, it should be against Judge O'Hara and not Judge Murphy." (Pl. App. 19b) (emphasis added). The variety of explanations for the harsh action taken have served in every way, except to justify the dismissal.

CONTENTION

III

A DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS NOT PROPERLY GRANTED WHERE THE MOTION IS BASED ON A SUPPORTING AFFIDAVIT THAT IS NOT SWORN TO BY AFFIANT AS BEING ON HIS PERSONAL KNOWLEDGE AND WHERE MATERIAL FACTS ARE IN DISPUTE.

Rule 56 (e) of the Federal Rules of Civil Procedure provides that "Supporting and opposing affidavit shall be made on personal knowledge, shall set forth such facts as would be admissable in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." The affidavit in support of respondents motion does not conform to this rule because it is not made on personal knowledge of the affiant and does not show affirmatively that affiant is competent to testify to the matters stated therein. (Per. App. 9a-10a; Sec. Res. App. 14b) Walling v. Fairmont, 139 F. 2d 318.

Petitioner further sumbits that on motion for summary judgment the court cannot try issues fo fact but can only determine whether there are issues of fact to be tried, and once having determined that affirmatively, must leave those issues for determination at trial. Knapp v. Kensey, 249 F 2d 797 ; Kennedy v. Silas Mason Co., 334 U.S. 249. As submitted hereinbefore by petitioner, issues of fact were raised and were well formed in the courts below. At the least, the central issue inherent in Section 1981 was outstanding, namely, whether the petitioner was permitted to enjoy the same right to trial and access to court, whether she was treated in the same manner with regard to the dismissal of her case, whether she was given the full and equal benefit of all the laws and proceedings for the security of persons and property, all, as is enjoyed by white citizens. Hence, the motion for summary judgment should not have been granted by the District Court or affirmed by the court below.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: October, 1965

HAROLD WHITE

APPENDIX A

No. 16127

UNITED STATES COURT OF APPEALS
FOR SIXTH CIRCUIT

LUCY ANDREWS,

Plaintiff-Appellant,

vs

THOMAS J. MURPHY, Judge of the
Circuit Court of Wayne County, Michigan,

Defendant-Appellee.

APPEAL from the
United States District
Court for the Eastern
District of Michigan,
Southern Division.

Decided July 30, 1965

Before: Miller, O'Sullivan and Phillips, Circuit Judges.

Phillips, Circuit Judge. Plaintiff, a Negro, filed an action for personal injuries in the Circuit Court of Wayne County, Michigan, against two white defendants early in 1959. After numerous delays the case was set for trial before a jury on May 3, 1961, with adequate advance notice to plaintiff's attorney. On that day, at a time when the defendants in the state court proceedings were present and ready to proceed with the trial, plaintiff's attorney appeared in person and moved for a continuance on the ground that he, the attorney, was ill. The attorney failed to produce medical evidence of his alleged illness. The state court concluded that the motion was filed only for purpose of delay, and denied a continuance. The state trial judge then inquired whether plaintiff's counsel was prepared to proceed with the trial and, upon counsel's reply that he physically unable to do so, the suit was dismissed with prejudice.

No. 16127 Andrews v. Murphy, Judge

The Supreme Court of Michigan affirmed the action of the state trial court. Andrews v. Roberts, 366 Mich. 620, 115 N.W. 2d 322.

Plaintiff thereupon filed this action in the District Court against State Circuit Judge Thomas J. Murphy under 42 U.S.C. Sec. 1981, 1983, contending that the dismissal of her action in the state court was motivated by racial discrimination and that she had been denied equal protection of the laws and deprived of property without due process of law.[1]

The complaint prays for a declaratory judgment to the effect that the dismissal of her suit violates her constitutional rights and that:

> "...the defendant, his successors in office and all persons acting in defendant's behalf and in behalf and support of defendant's action be enjoined from further enforcement of defendant's aforesaid Order of Dismissal of May 3, 1961, and be restrained from preventing plaintiff's aforesaid Lawsuit from proceeding to trial according to law."

---

[1] The complaint containes the following charges:

"IX. That the foregoing acts of the defendant were arbitrary, unreasonable and were done deliberately, wilfully and with an intention to depriveplaintiff. of her rights guaranteed to her by the Fourteenth Amendment to the United States Constitution and by Title 42, United States Code, Sections 1981 and 1983.

"X. That the foregoing acts of the defendant were done as and were acts of racial discrimination. That the manner, mode and course of procedure applied against this plaintiff and her counsel have rarely, and probable never, been applied against any white litigant in the State under similar circumstances and conditions and are contrary to settled law and customary procedure in the United States, the benefits of which are secured to and enjoyed by white litigants in the State of Michigan and throughout the United States of America.

In granting defendant's motion for summary judgment, the district judge said:

> "The Supreme Court of Michigan was a proper forum of review of the action taken in the Wayne County Circuit Court. If there were constitutional questions involved, plaintiff could have petitioned the Supreme Court of the United States for Certiorari. The District Court cannot review the proceedings of the Wayne County Circuit Court. See *Saier v. State Bar of Michigan*, 293 F. 2d 756, *cert. denied*, 368 U.S. 947; *Williamson v. Puerifoy*, 316, F. 2d 774, *cert. denied*, 375 U.S. 967.
>
> "Plaintiff has made an extremely grave charge in suggesting that defendant's decision was informed with prejudice. Nothing contained in the portions of the record that have been submitted could substantiate such a charge, nor could anything of which plaintiff has advised the court."

We have examined the entire file and find nothing to support the charges of racial discrimination. The Supreme Court of Michigan reviewed the trial court proceedings in a comprehensive opinion and found that the denial of plaintiff's motion for a continuance and the

---

"XI. That the foregoing acts of the defendant were done as a result of an intentional purpose to discriminate between persons and classes of persons, to discriminate solely on account of race against the plaintiff and her rights, in relation to white litigants under the same or similar circumstances and conditions.

"XII. That the foregoing sets of the defendant, done under color of state law, abridged and violated plaintiff's rights under the equal protection, due process and privileges and immunities clauses of the Fourteenth Amendment to the Constitution of the United States and deprived plaintiff of her rights secured to her by Title 42, United States Code, Section 1981 and 1983 and violated the provisions of Article 6, Section 2 of the Constitution of the United States, which specifies that the Constitution (sic) and laws of the United States shall be the Supreme Law of the Land."

dismissal of her action with prejudice was amply justified by the record, saying:

> "We find nothing in this record to justify reversal. The record disclose a course of conduct by plaintiff's counsel which amply supports Judge O'Hara's tramchant observations concerning the purpose of the motion for continuance. Although counsel's alleged disabling illness was claimed to have become evident a few days before the motion was made, no medical affidavit accompanied the motion nor was medical testimony offered in its support. We note in passing that the motion and affidavit were executed the day before the afternoon they were presented.
>
> "Upon failure of counsel to obtain continuance from the executive judge in accordance with practice prescribed by the Wayne Circuit's local rules, and upon his claimed inability to proceed with trial, Judge Murphy had no alternative to dismissal consistent with the interests of the public in speedy and orderly dispositions of litigation, to say nothing of the interests of defendants, who were present and ready to proceed with trial." 366 Mich. 620, 622-23.

At the hearing on the motion for summary judgment, the district judge repeatedly interrogated plaintiff's attorney as to the factual basis of his charge of racial discrimination. When asked specifically by the district judge whether he had proof to support this charge, the answers of plaintiff's attorney were evasive and unresponsive. We do not find in the transcript of the hearing in the district court or in the brief and oral argument on behalf of plaintiff-appellant in this court the slightest indication of any justification of this charge. To the contrary the record compels the conclusion that plaintiff's case was dismissed in the state court because of the dilatory tactics of her attorney and his failure and refusal to proceed with the trial on the day it was set for hearing more than two years after the suit was filed.

It should be added that the record shows that Judge Murphy, defendant herein, never had any contact with the litigant but, in dismissing the action, merely followed the direction of the executive judge of his court, Judge Chester P. O'Hara, now deceased.

Furthermore, judicial officers are immune from suit under 42 U.S.C. Sec. 1983. Kenney v. Fox, 232 F. 2d 288 (C.A.6) cert. denied, 352 U.S. 855.

Affirmed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LUCY ANDREWS, Plaintiff vs THOMAS J. MURPHY, Defendant	Civil Case No. 25286

MEMORANDUM AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

At asession of said Court, held in the Federal Building, in the City of Detroit, Michigan, on the 6th day of July, 1964.

PRESENT: The Honorable Fred W. Kaess,
United States District Judge

This is an action under Sections 1981 and 1983 of Title 42, United States Code. Plaintiff contends that she has been denied the equal protection of the laws and deprived of property without due process of law through the dismissal of her action for personal injuries in the Wayne County Circuit Court. The circumstances of the dismissal are discussed in the opinion of the Supreme Court of Michigan in Andrews vs. Roberts, 366, Mich. 620. It is sufficient to say that the Supreme Court of Michigan found the denial of plaintiff's motion for continuance and the dismissal of her action with prejudice to have been amply justified by the record.

The Supreme Court of Michigan was a proper forum of review of the action taken in the Wayne County Circuit Court. If there were constitutional questions involved, plaintiff could have petitioned the Supreme Court of the United States for certiorari.

The District Court cannot review the proceedings of the Wayne County Circuit Court. See __Saler v. State Bar of Michigan,__ 293 F. 2d 756, __cert. denied,__ 368 U.S. 947; Williamson v. Puerfiov, 316 F. 2d 774, __cert. denied,__ 375 U.S. 967.

Plaintiff has made an extremely grave charge in suggesting that defendant's decision was informed with prejudice. Nothing contained in the portions of the record that have been submitted could substantiate such a charge, nor could anything of which plaintiff has advised the court.

IT IS ORDERED that the defendant's motion for summary judgment be granted.

FRED W. KAESS
United States District Judge

1. Constitution of the United States.

(a) Article VI, Section 2

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land; and the Judge in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

(b) Fourteenth Amendment, SectionI

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens, of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without protection of the laws."

2. Statutes.

(a) Title 28 U.S.C.A., Section 1343 (3), (4)

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State, law, statute, ordinance, regulation, custon, or usage, of any right, privilige or immunity secured by the Constitution of the United States of by any Act. of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States:

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

(b) Title 42 U.S.C.A. Section 1983

Every person, who under color of any stuatue, ordinance, regulation, custon or usage, of any state or territory, subject or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

(c) Title 42 U.S.C.A., Section 1981

"All persons within the jurisdiction of the United States shall have the same right in every state and terirory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

(d) Title 28 U.S.C.A. Sections 2201

"In a case of actual controversy within its jurisdiction, except with respect to federal taxes any court of the United States upon the filing of appropriate pleadings may declare the rights and other legal relation of any interested party seeking such declaration whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

APPENDIX C

14 -Jan

STATE OF MICHIGAN

SUPREME COURT

LUCY ANDREWS

Plaintiff and Appellant,

vs

DAVID ROBERTS and
BOBBY JOHNSON

Defendants and Appellees.

BEFORE THE ENTIRE BENCH

SOURIS, J. (for affirmance)

By this appeal we are asked to review the denial of plaintiff's motion for continuance made the day her case was assigned for jury trial and its dismissal upon her counsel's assertion that he was unable to proceed with the trial. The suit had been started in February of 1959 to recover damages for plaintiff's injuries claimed to have resulted from defendant's negligence in the operation of an automobile.

Following completion of the pre-trial conference, four or five motions for discovery were filed in plaintiff's behalf. Upon denial of three of said motions by the executive judge of the Wayne County Circuit Court, plaintiff filed with this Court in April of 1961 an emergency application for leave to appeal therefrom. Apparently the case was then on the circuit court's calendar of cases ready for trial. At the request of our clerk, in order to give us an opportunity to consider and to act upon plaintiff's application and in order to avoid any further delays in the trial of the case in the event plaintiff's emergency application was denied,* the Wayne Circuit's executive judge set a date certain for trial of the case.

In the afternoon of May 3, the case was assigned for trial to the Honorable Thomas J. Murphy, at which time plaintiff's counsel appeared before Judge Murphy without his client and without his witnesses but with a motion for continuance, which alleged that he (plaintiff's counsel) was "unable to attend and conduct the trial of said cause on behalf of the plaintiff due to his illness which is disabling, unavoidable and not voluntary." The motion described counsel's illness as a disability "in the nature of internal disorders, which became evident within the past few days." The motion was accompanied by an affidavit of counsel describing his disability in the same fashion.

Pursuant to sections 4(b) and 6(b) of Wayne Circuit's Local Rules, Judge Murphy referred the motion for continuance to Judge Chester P. O'Hara, the executive judge. Judge O'Hara refused to grant a continuance, indicating in doing so that he believed that the motion has been filed only for purpose of delay. Upon return to Judge Murphy's courtroom and after counsel for the parties had explained to him what transpired before Judge. O'Hara, Judge Murphy inquired whether plaintiff's counsel was prepared to proceed with the trial and, upon counsel's reply that he was physically unable to do so, the cause was dismissed with prejudice. Orders denying the motion for continuance and dismissing the cause were subsequently signed and filed, from which orders plaintiff appeals.

We find nothing in this record to justify reversal. The record discloses a course of conduct by plaintiff's counsel which amply supports Judge O'Hara's trenchant observations concerning the purpose of the motion for continuance. Although counsel's alleged disabling illness was claimed to have become evident a few days before the motion was made, no medical affidavit accompanied the

SEDFRE ART DEALERS ASS. of AMERICA, INC et.al. VS. PACETTA, ALBERT, S. NEWYORK 1965
(CONSUMER PROTECTION)

Box 34
Folder 15

State Historical Society of Wisconsin

Please Retain Original Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- X

ART DEALERS ASSOCIATION OF AMERICA, INC., DOWNTOWN GALLERY, INC., ANDRE EMMERICH GALLERY, INC., FAR GALLERIES, INC., SIDNEY JANIS GALLERY, INC., PIERRE MATISSE GALLERY, INC., BETTY PARSONS, d/b/a BETTY PARSONS GALLERY, PERLS GALLERIES, INC., PAUL ROSENBERG & CO., SAIDENBERG GALLERY, INC., E. V. THAW & CO., INC. and WILLARD GALLERY, INC.,

Plaintiffs,

-against-

ALBERT S. PACETTA, as Commissioner of Public Markets of the City of New York,

Defendant.

- X

COMPLAINT

Plaintiffs above named, by their attorneys Rosenman Colin Kaye Petschek & Freund, complaining of defendant allege that:

1. Plaintiff Art Dealers Association of America, Inc. (herein called "Association") is a corporation duly organized and existing under the Membership Corporations Law of the State of New York. It is a non-profit organization organized to promote the interests of those engaged in the business of dealing in works of fine arts and for related purposes. It has 62 members, of whom 50 are art dealers in the City of New York.

2. Each of the other plaintiffs (herein called the "plaintiff dealers") is a member of plaintiff Association. Each of them, other than plaintiffs Betty Parsons and Paul Rosenberg & Co., is a corporation duly organized and existing under the

laws of the State of New York. Plaintiff Betty Parsons does business under the firm name of Betty Parsons Gallery. Plaintiff Paul Rosenberg & Co. is a partnership. Each of the plaintiff dealers is engaged in the business of operating an art gallery in the City of New York at which paintings, sculptures, drawings and other works of art are sold, exposed for sale and offered for sale.

3. At all times hereinafter mentioned, defendant Albert S. Pacetta, as Commissioner of Public Markets of the City of New York (herein called the "Commissioner") was, and he is, the duly designated and appointed head of the Department of Markets created and existing under Chapter 36 of the New York City Charter.

4. Upon information and belief, on or about July 28, 1965, defendant, purporting to act under the authority granted to him by law, promulgated a regulation (herein called "Regulation 49"), to be effective August 15, 1965, reading as follows:

> "Regulation 49. – Display of Retail Price Required.
>
> "Any commodity, whether edible or inedible, sold, exposed for sale or offered for sale at retail, shall have conspicuously, plainly and clearly displayed the price per unit of weight, dry or liquid measure, or numerical count by a sign, tag or label or by a sign at the point of display."

5. Defendant [illegible] repeatedly announced [illegible] works of art [illegible] subject to Regulation 49 [illegible] that regulation against art dealers.

9. If Regulation 49 is interpreted to apply to the art galleries of plaintiff dealers and other art dealers, such regulation would deprive them of their liberty and property without due process of law in violation of Article 1, Section 6 of the Constitution of the State of New York and the Fourteenth Amendment of the Constitution of the United States.

10. By reason of the premises, a serious dispute exists between plaintiffs and defendant concerning the validity of Regulation 49 and the application thereof to the business of plaintiff dealers and the other art dealers who are members of plaintiff Association, plaintiffs claiming that said regulation is invalid in its entirety or, in the alternative, that it is inapplicable to art dealers, and defendant claiming that it is a valid exercise of his authority as applied to art galleries.

11. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against defendant as follows:

(a) Declaring that Regulation 49 was promulgated by defendant without authority and is null, void and of no legal effect whatever; or, in the alternative, that said regulation is inapplicable to the business of plaintiff dealers and other dealers in fine arts who are members of plaintiff Association.

(b) Enjoining defendant, preliminarily during the pendency of this action and permanently thereafter, from enforcing or attempting or threatening to enforce Regulation 49 against any of the plaintiff dealers or any other art dealers who are members of plaintiff Association.

(c) Granting such other, further and different relief as to the Court may seem just and proper in the circumstances, together with the costs and disbursements of this action.

ROSENMAN COLIN KAYE PETSCHEK &
FREUND
Attorneys for Plaintiffs
575 Madison Avenue
New York, New York 10022

STATE OF NEW YORK)
} SS.:
COUNTY OF NEW YORK)

RALPH F. COLIN, being duly sworn deposes and says:

I am a Vice President of plaintiff Art Dealers Association of America, Inc., a corporation created and existing under the laws of the State of New York; I have read the annexed complaint and know it to be true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Ralph F. Colin

Sworn to before me this
18th day of August, 1965

Julia D. Caputo

JULIA D. CAPUTO
NOTARY PUBLIC, State of New York
No. 31-0359930
Qualified in New York County
Commission Expires March 30, 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ART DEALERS ASSOCIATION OF AMERICA, INC., DOWNTOWN GALLERY, INC., ANDRE EMMERICH GALLERY, INC., FAR GALLERIES, INC., SIDNEY JANIS GALLERY, INC., PIERRE MATISSE GALLERY, INC., BETTY PARSONS, d/b/a/ BETTY PARSONS GALLERY, PERLS GALLERIES, INC., PAUL ROSENBERG & CO., SAIDENBERG GALLERY, INC., E. V. THAW & CO., INC. and WILLARD GALLERY, INC.,

Plaintiffs,

-against-

ALBERT S. PACETTA, as Commissioner of Public Markets of the City of New York,

Defendant.

Plaintiffs designate New York County as the place of trial. The basis of the venue is the principal office of defendant.

SUMMONS

Plaintiffs have their places of business in the County of New York.

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within 20 days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 18, 1965

Rosenman Colin Kaye Petschek & Freund
Attorneys for Plaintiffs
575 Madison Avenue
New York, New York 10022
MUrray Hill 8-7800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- X

ART DEALERS ASSOCIATION OF AMERICA, INC., :
et. al.,
:
Plaintiffs, AFFIDAVIT
:
-against-
:
ALBERT S. PACETTA, as Commissioner of
Public Markets of the City of New York, :

Defendant. :

- X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

RALPH F. COLIN, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Kaye Petschek & Freund, attorneys for the plaintiffs in this action. I am also Administrative Vice President of the plaintiff Art Dealers Association of America, Inc., a corporation organized under the Membership Corporations Law of the State of New York (herein called "Association"). I make this affidavit in support of plaintiffs' motion for an injunction pendente lite restraining the enforcement of a regulation promulgated by the defendant Commissioner of Public Markets.

2. The plaintiff Association was organized to promote the interests of those engaged in the business of dealing in works of fine arts and for related purposes. It is a non-profit organization and enjoys

federal tax exemption. It has sixty-two members, fifty of whom have galleries in the City of New York at which paintings, sculptures, drawings and other works of art are exhibited and offered for sale.

3. Plaintiffs are about to commence this action by service of the summons and complaint, a copy of which is annexed hereto, for declaratory relief and an injunction against the enforcement by the defendant Commissioner of Public Markets of the City of New York of a regulation promulgated by the Commissioner on July 28, 1965, to take effect August 15, 1965. That regulation reads as follows:

> "Regulation 49. - Display of Retail Price Required.
>
> "Any commodity, whether edible or inedible, sold, exposed for sale or offered for sale at retail, shall have conspicuously, plainly and clearly displayed the price per unit of weight, dry or liquid measure, or numerical count by a stamp, tag or label or by a sign at the point of display."

4. When announcement of Regulation 49 appeared in the press, I examined the statutes which define the authority of the Commissioner of Public Markets and reached the conclusion that they do not authorize the adoption of that regulation. I also concluded that even if the regulation is valid as applied to certain businesses, it would be arbitrary and capricious to apply it to the business of dealers in works of fine art. Under date of August 2, 1965, I addressed a letter to the Commissioner stating that, on

behalf of its members, plaintiff Association objects to the regulation.

5. On Wednesday, August 4, 1965, I attended a meeting at the office of the defendant Commissioner, at which I sought to persuade him of the inappropriateness of applying this regulation to dealers in works of art. The Commissioner made it clear, however, that he insists upon treating works of art as a "commodity" within the meaning of the regulation. The only concession which he was willing to make was that art dealers might have their prices listed in an index file available on request instead of having them displayed with the art works. For the reasons set forth in the annexed affidavit of Eugene V. Thaw, president of one of the plaintiffs, that concession is not acceptable to the eleven dealers who have joined with the Association as plaintiffs in this action or to the other members of the Association.

6. The position taken by the Commissioner at the meeting held on August 4, 1965, was summarized in a report published in the New York Times on August 5, 1965. His defense of the regulation, as there reported, reads:

> "The Commissioner said the "most important" aspect of his regulation was "to protect the consumer from being exploited by businessmen trying to charge what the traffic will bear," as well as to protect the businessman "from cutthroat competition" by having prices in most stores clearly displayed."

I respectfully submit that this statement shows on its face that the Commissioner is attempting to legislate, and to do so in an area that is plainly outside of his authority. His powers relate to the regulation of public markets and to the enforcement of laws relating to weights and measures. The plaintiff art dealers do not sell or expose or offer for sale their works in public markets. They do not sell those works by weight or measure.

7. The art dealers object to the regulation as applied to their business not because they are "trying to charge what the traffic will bear" or because they wish to engage in "cutthroat competition". Their conviction that application of the regulation to their business is wholly arbitrary stems from long standing and entirely legitimate methods of doing business, as shown in the annexed affidavit of Mr. Thaw.

8. For the reasons stated by Mr. Thaw, it is submitted that, as applied to dealers in works of the fine arts, the Commissioner's regulation is arbitrary and capricious, and that the enforcement thereof would cause the plaintiff art dealers irreparable injury. To prevent that injury, plaintiffs seek an injunction pendente lite.

9. An order to show cause is requested in order that plaintiffs' motion for an injunction pendente lite may be brought on at the earliest

possible date. It is proposed to serve such order with the summons and complaint.

10. No previous application has been made for the order herein requested.

WHEREFORE, it is respectfully requested that an order to show cause be signed in the form annexed hereto.

Ralph F. Colin

Ralph F. Colin

Sworn to before me this
18th day of August, 1965.

JOSEPH H. SCHNA[illegible]
NOTARY PUBLIC, State of New York
No. 24-3312783
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1967

At a Special Term, Part II,
of the Supreme Court of
the State of New York,
held in and for the County
of New York, at the County
Court House, in the City
of New York, on the 19th
day of August, 1965.

Penalties

548216

PRESENT:

HON. EDWARD T. McCAFFREY,

Justice.

- X

ART DEALERS ASSOCIATION OF AMERICA, INC., DOWNTOWN GALLERY, INC., ANDRE EMMERICH GALLERY, INC., FAR GALLERIES, INC., SIDNEY JANIS GALLERY, INC., PIERRE MATISSE GALLERY, INC., BETTY PARSONS, d/b/a/ BETTY PARSONS GALLERY, PERLS GALLERIES, INC., PAUL ROSENBERG & CO., SAIDENBERG GALLERY, INC., E. V. THAW & CO., INC. and WILLARD GALLERY, INC.,

Plaintiffs,

-against-

ALBERT S. PACETTA, as Commissioner of Public Markets of the City of New York,

Defendant.

- X

Index No.
~~[illegible]~~
12850-1965

ORDER TO
SHOW CAUSE

LAW DEPARTMENT
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RECEIVED

Upon the summons and verified complaint herein and the annexed affidavits of Ralph F. Colin, sworn to August 18, 1965, and Eugene V. Thaw, sworn to August 17, 1965, and sufficient cause appearing therefor, it is

ORDERED, that defendant show cause at a Special Term, Part I of this Court, to be held in and for the County of New York, on the 24th day of August, 1965, at 9:30 A. M. or as soon thereafter as counsel can be heard, why an order should not be made restraining defendant, his agents and attorneys, *pendente lite* from enforcing or attempting or threatening to enforce the regulation promulgated by defendant on or about July 28, 1965, and designated Regulation 49; and it is further

ORDERED, that service of a copy of this order and the papers upon which it is based upon defendant or his duly designated agent on or before August 9, 1965, shall be deemed good and sufficient service.

ENTER:

E T McC

Justice of the Supreme Court
of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- X

ART DEALERS ASSOCIATION OF AMERICA, INC., et. al.,

Plaintiffs,

-against-

ALBERT S. PACETTA, as Commissioner of Public Markets of the City of New York,

Defendant.

- X

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

EUGENE V. THAW, being duly sworn, deposes and says:

1. I am president of E. V. Thaw & Co., Inc., one of the plaintiffs in this action. I make this affidavit in support of plaintiffs' motion for a preliminary injunction against the enforcement of the regulation ("Regulation 49") recently promulgated by the defendant Commissioner of Public Markets of the City of New York insofar as that regulation would require the display to the public of the price of each work of art exposed or offered for sale.

2. I am advised that the adoption of Regulation 49 exceeded the statutory powers of the Commissioner, and I understand that plaintiffs' attorneys are challenging the validity of the regulation on that ground. In this affidavit I shall set forth

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

[illegible] by establishing the second ground of the complaint, [illegible] that, as applied to dealers in works of fine arts, the Regulation is arbitrary and capricious. I do not refer to the dealers in low-priced works by unknown or little known artists which are sold largely for home decoration. Without reflecting on the business of those dealers, it cannot be denied that they are in a market entirely distinct from that of the sale of works by recognized artists who have gained critical acclaim and wide reputation. The other plaintiffs and I are engaged in the exhibition and sale of such works. As applied to our business, enforcement of Regulation 49 would require a drastic change in standard procedures, - procedures which are entirely legitimate and stem from the nature of the art market.

3. I have engaged in business as an art dealer in the City of New York for over 15 years. I have a gallery at 50 East 78th Street, in the Borough of Manhattan. That gallery is on the street level and is open to the public during regular business hours. At times, I hold special exhibitions which the public is invited to attend through newspaper announcements and advertisements. I regularly have on display in my gallery paintings, sculptures and drawings some of which are owned by my corporation either alone or jointly with another dealer, and some of which are consigned for sale. Most of those works of art are for sale, but some are held for a period

of time before being offered, some are displayed after they have been sold, and others are reserved, or held under option, for particular purchasers. At no time do I display or otherwise publicly announce the price for which any work is offered for sale.

4. *A work of art is not a standardized product.* It cannot be priced on the basis of cost of production or any other objective factor. Each work is unique. Works of the same size by the same artist may vary widely in quality and therefore in price. The quality of a work is a matter of judgment, dependent on individual tastes which vary substantially. Price is influenced not only by the quality of the individual work but also by public taste, which undergoes material change from time to time. Artists and schools of art rise and fall in popularity. The actions of museums, of important private collectors and of critics may cause rapid changes in the market.

5. The sale of works of art is unlike the sale of groceries or a pair of shoes. It is a task which calls for specialized skill of a subtle character. The purchasers are for the most part sophisticated individuals. They include museum directors and informed collectors. The dealer gets to know their personal tastes, interests and buying habits. When an important work is obtained, the dealer may display it first to a particular prospec-

tive purchaser whose likely interest is known. The ability to select his purchaser is of importance both to the dealer and to the artist. The placing of works in museums and in well-known private collections enhances the reputation of both. The judicious selection of purchasers by dealers has been an important factor in building the reputations of many artists. Accordingly, the dealer is often willing to sell a painting to one purchaser and not to another who is willing to pay the price. Indeed, the granting of price concessions, not only to museums, but also to established collectors and to young people who are starting to collect is often in the long-range interest of both dealer and artist.

6. The required public display of prices would injuriously affect the art market for a number of reasons:

(a) Most purchasers do not wish to have known the price which they have paid for a work. This is true of museums as well as private collectors. There is competition among purchasers as well as sellers and pride in the skill with which they operate. The ability to tell a purchaser that the price has not been quoted to others is often of great assistance in making a sale.

(b) Many purchasers are dealers who buy for resale. A considerable portion of my business is done with other dealers. I often acquire works with the knowledge that other dealers are in a better position than I am to sell them advantageously. Conversely, other dealers bring works to me for which they believe that I have prospective customers. We often exchange works. If the price quoted to a dealer-purchaser were publicized, his ability to sell the work at a profit would be seriously impaired.

(c) A number of complex factors enter into the quotation of a price. Often the price must be adjusted to fit a particular situation, such as the inclusion of a different frame or the relining, conservation or cleaning of a picture. The nature and terms of the prospective sale must be considered. For example, a dealer or agent asking for a "net" price might be told one price if the transaction is to be an outright purchase and another if he merely wishes to offer the work "on speculation" to a client. A price for immediate payment may vary from one quoted to a purchaser who intends to pay over an extended period of time. In certain cases, such as purchases for museums, a discount must be allowed and the price of a work held on consignment must be adjusted in order to cover both that discount and the dealer's commission.

Such factors cannot be reflected in a single [illegible]

[illegible]

[illegible]

[illegible]

of it is the Commission's purpose to prevent such a practice, the regulation would not accomplish it. It would inevitably lead to the quotation of unrealistic prices. In order to protect against contingencies, the dealers would have to set the quoted prices at more than they expect to get. This would lead to bargaining in every case, with the very result which the Commission is ostensibly trying to avoid.

3. In pricing a work of art, [illegible] subjective judgment as to the quality of the work, upon which connoisseurs disagree, [illegible]

10. I realize that what I have said about the manner in which my business is conducted does not precisely describe the [illegible] of operation of every art dealer in [illegible]. Probably no two of us proceed in exactly the same way. The differences in procedure among dealers stem, among other things, from differences in the nature of the works in which they specialize and [illegible] in the [illegible] of their clientele. These very differences give [illegible] to the [illegible] of the dealer and the [illegible] of [illegible] with clients. Despite all such differences, however, I am certain, on the basis of my [illegible] and experience, that [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. The effect of [illegible] dealers in [illegible] inspections [illegible] [illegible] [illegible]. This would seriously prejudice established [illegible], the [illegible] and their collector

11. In short, the required announcement of a price for each work of art exposed or offered for sale would drastically and injuriously affect the manner in which the art business is conducted. The wide availability of the price of a work decidedly lessens its desirability to many prospective purchasers. The work becomes "shopworn", or "burned" in art world parlance. This is shown by the experience with works which have been sold at [illegible] auction. Because the sale price becomes well known, it is often difficult to obtain its true value on resale, even after there has been a change in the market. For this reason, many works which are bought at auctions abroad are brought here for sale, and those bought here by dealers are often sent abroad for resale.

12. The threatened enforcement of the present regulation would place works of art now in the hands of dealers in the same category as those which had just been sold at public auction. Immediate and irreparable injury would result. To prevent that injury, the immediate relief of a preliminary injunction is required.

Eugene V. Thaw

Sworn to before me this
day of August, 1985.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
....x

ART DEALERS ASSOCIATION OF AMERICA, INC., DOWNTOWN GALLERY, INC., ANDRE EMMERICH GALLERY, INC., FAR GALLERIES, INC., SIDNEY JANIS GALLERY, INC., PIERRE MATISSE GALLERY, INC., BETTY PARSONS, d/b/a/ BETTY PARSONS GALLERY, PERLS GALLERIES, INC., PAUL ROSENBERG & CO., SAIDENBERG GALLERY, INC., E.V. THAW & CO., INC., and WILLARD GALLERY, INC.,

Plaintiffs,

- against -

ALBERT S. PACETTA, as Commissioner of Public Markets of the City of New York,

Defendant,
....x

Index No.
12850-1965

NOTICE OF MOTION FOR LEAVE TO APPEAR AMICUS CURIAE.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, ESQ., sworn to the 14th day of September, 1965, and upon the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a motion term thereof, to be held at Courthouse, 60 Centre Street, in the Borough of Manhattan, New York, on the 17th day of September, 1965, at 10:00 A.M. of that day or as soon thereafter as counsel can be heard, for an order granting the Congress of Racial Equality leave to appear as amicus curiae and file the attached memorandum of law in the above entitled action, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
September 15, 1965

Yours, etc.,

George Schiffer
Attorney for Congress of Racial Equality,
Office & P. O. Address
40 E. 49th Street
New York, N. Y.

To; Leo A. Larkin
Corporation Counsel
Joseph Halpern
Assistant Corporation Counsel
Municipal Building
New York, New York 10007

Rosenman, Colin, Kaye, Petschek, & Freund.
Attorneys for Plaintiffs
575 Madison Avenue. New York. New York 10022

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

AFFIDAVIT

STEPHEN M. NAGLER, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York and an attorney for the Congress of Racial Equality (CORE). I submit this affidavit in support of the application of the Congress of Racial Equality for leave to appear as amicus curiae and submit a memorandum of law in the above entitled matter.

2. CORE is a civil rights organization with substantial roots in the community (including 17 chapters in the New York area), affected by "Regulation 49". Most of CORE'S chapters are in areas seriously affected by fraudulent business practices, including price discrimination, which Regulation 49 seeks to prevent, and which CORE has opposed as an infringement on the civil rights of affected groups.

3. The memorandum of law which amicus would submit if this motion is granted as attached hereto. CORE believes that this Court will benefit from hearing the fullest possible presentation of the arguments involved in this case.

WHEREFORE, your deponent respectfully requests that the instant application be granted in all respects and the CONGRESS OF RACIAL EQUALITY & the aforementioned org's be given leave to appear as an amicus curiae and file the attached memorandum orig of law in this action.

Sworn to before me this
14th day of September, 1965.

Freda R. Strent

FREDA R. STRENT
NOTARY PUBLIC, State of New York
No. 24-3876575
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1967

Stephen M. Nagler
Stephen M. Nagler

New file

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY of NEW YORK

- x

ART DEALERS ASSOCIATION OF AMERICA, INC.,
DOWNTOWN GALLERY, INC., ANDRE EMMERICH
GALLERY, INC., FAR GALLERIES, INC., SIDNEY
JANIS GALLERY, INC., PIERRE MATISSE GALLERY,
INC., BETTY PARSONS d/b/a/ BETTY PARSONS
GALLERY, PERLS GALLERIES, INC., PAUL ROSENBERG
& CO., SAIDENBERG GALLERY, INC., E.V. THAW & CO.,
INC., and WILLARD GALLERY, INC.,
Plaintiffs,

- against -

ALBERT S. PACETTA, as Commissioner of Public
Markets of the City of New York,
Defendant

MEMORANDUM OF LAW OF AMICUS CURIAE

George Schiffer, Esq.,
Attorney for AMICUS CURIAE
Congress of Racial Equality
40 E. 49th St.
New York, N.Y. 10017

Bernard Sorkin,
Carl Rachlin,
Stephen M. Nagler
Of Counsel.

SUMMARY OF ARGUMENT

POINT I

REGULATION 49 IS DESIGNED TO SERVE A SIGNIFICANT PUBLIC PURPOSE I.E., THE PREVENTION OF FRAUD AND PRICE DISCRIMINATION.

POINT II

THE REQUIREMENT THAT COMMODITIES BE LABELLED AS TO PRICE IS NOT A DENIAL OF DUE PROCESS.

POINT III

THE COMMISSIONER OF PUBLIC MARKETS HAS AUTHORITY TO PROMULGATE A REGULATION REQUIRING COMMODITIES TO BE LABELLED AS TO PRICE.

POINT IV

IF WORKS OF ART ARE NOT COMMODITIES, REGULATION 49 WOULD NOT BE APPLIED TO THEM AND THERE IS NO "CASE OR CONTROVERSY."

POINT I

REGULATION 49 IS DESIGNED TO SERVE A SIGNIFICANT PUBLIC PURPOSE I.E. THE PREVENTION OF FRAUD AND PRICE DISCRIMINATION.

The promulgation of Regulation 49 by Hon. Albert S. Pacetta, Commissioner of Public Markets, of the City of New York was a meaningful step toward the protection of consumers from unethical fraudulent, and discriminatory practices engaged in on a significant scale. Most frequently the victims of these practices have been the poor. As stated in "The Most For Their Money," (Report of the President's Panel on Consumer Education for Persons with Limited Income, 1965) at p. VIII, Note 70:

> "The poor are often a clearly defined target for unscrupulous sales techniques. Their capacity to protect themselves from fraud, deception, and misrepresentation is usually limited--they may be unaware of being defrauded; they may be unaware of their rights; or they may be reluctant for a variety of reasons to instigate corrective action. Their inaction is often interpreted as satisfaction."

Indeed, the market-place in low income communities has been characterized as a:

> "...commercial jungle in which exploitation and fraud are the norm rather than the exception." David Caplovitz, "Characteristics of the Market Place in the Low Income Community," (Consumer Action Conference, Office of Economic Opportunity, 1965).

Certainly, "price tagging" could not be expected to eliminate or even diminish the use of many fraudulent practices currently engaged; but there are several practices which might certainly be curtailed.

Dr. Caplovitz has outlined several practices which would, it is hoped, be eliminated by price tagging:

> "The system of pricing in the low-income market differs from that in the bureaucratic market of the downtown stores in another respect: in East Harlem there are hardly any 'one price' stores. In keeping with a multi-price policy, price tags are conspicuously absent from the merchandise. The customer has to ask, 'how much?,' and the answer he gets will depend on several things. If the merchant considers him a poor risk, if he thinks the customer is naive, or if the customer was referred to him by another merchant or a peddler to whom he must pay a commission, the price will be higher. The fact that prices can be affected by 'referrals' calls attention to another peculiarity of the low-income market, what the merchants call the 'T.O.' system.
>
> "Anyone closely familiar with sales practices in a large retailing establishment probably understands the meaning of 'T.O.' When a salesman is confronted with a customer who is not responding to the 'sales pitch,' he will call over another salesman, signal the nature of the situation by whispering, 'this is a T.O.,' and then introduce him to the customer as the 'assistant manager.' (fn. The initials stand for "turn over." The assistant manager" is ready to make a small concession to the customer, who is usually so flattered by this gesture that he offers no further resistance to the sale. For further descriptions of the "T.O.," see Cecil L. French, "Correlates of Success in Retail Selling," American Journal of Sociology, 66 (September, 1960), 128-134;

> and Erving Goffman, Presentation of Self in Everyday Life (New York: Doubleday, Anchor Books, 1959), pp.178-180.) In East Harlem, as the interviewers learned, T.O.s extend beyond the store. When a merchant finds himself with a customer who seems to be a greater risk than he is prepared to accept, he does not send the customer away. Instead, he will tell the customer that he happens to be out of the item he wants, but that it can be obtained at the store of his "friend" or "cousin" just a few blocks away. The merchant will then take the customer to a storekeeper with a less conservative credit policy. (fn. The interviewers found that the stores closer to the main shopping area of 125th Street generally had more conservative credit policies than those somewhat farther away. This was indicated by the percentage of credit sales the merchants reported as defaults. The higher-rental stores near 125th Street reported default rates of 5 and 6 percent, those six or seven blocks away, as high as 20 percent.) The second merchant fully understands that his colleague expects a commission and takes this into account in fixing the price. (fn. The referring merchant does not receive his commission right away. Whether he gets it at all depends upon the customer's payment record. He will keep a record of his referrals and check on them after several months. When the merchant who has made the sale has received a certain percentage of the payments, he will give the referring merchant his commission.) As a result, the customer who happens to walk into the 'wrong' store ends up paying more. In essence he is being charged for the service of having his credit potential matched with the risk policy of a merchant." (Caplovitz, "The Poor Pay More," (Free Press of Glencoe, 1963,) at 17, 18.)

Another evil which price tagging will eliminate is "price discrimination." In one study carried out by Mobilization For Youth on the lower east side of Manhattan, it was found, that very few stores had prices on television sets (inter alia) and that prices fluctuated according to the customers. In one store for example, three different shoppers were quoted 3 different prices. To the first shopper, a white law student, the TV set was offered for $125.00. To the second shopper, a Puerto Rican housewife, the same receiver was offered for $139.00. A Negro housewife who entered shortly after was offered the same television set for $200.00. "The Choiceless Shoppers," A Comparison Shopping Review of the L.E.S. (1965).

It is obvious, therefore, that Regulation 49 is based on a significant social need. On its face, it is apparent that the regulation was tailored to meet the need by dealing with unscrupulous practices arising from the failure to openly indicate the prices of commodities displayed. It in no way infringes on the right of the businessman to determine the price at which he wishes to sell his wares. Indeed, amicus contends that the regulation imposes no limitation to which an honest businessman would have cause to object.

POINT II

THE REQUIREMENT THAT COMMODITIES BE LABELLED AS TO PRICE IS NOT A DENIAL OF DUE PROCESS.

A requirement that merchandise be price-tagged is a reasonable response to the social and economic problems to which Regulation 49 is directed (Point I, supra), and such a requirement is far from novel. This approach to the elimination of caveat emptor in action has received both legislative and judicial sanction.

The gasoline purchasing public was sought to be protected from the greed and fraud of the gasoline retailers by a requirement that the gasoline pumps be marked with the price per gallon. Administrative Code of the City of New York Sect. B 36-101.0. This regulation was upheld by the Court of Appeals against the argument that it was a denial of due process. People vs. Arlen Service Stations 284 NY 340 (1940).

Neither the requirement for price tagging of gasoline pumps approved in the Arlen case nor Regulation 49 destroys or takes any of the property in question. Each of these requirements is a reasonable regulation of the use of that property in the light of social and economic ills to which the regulating authority may direct itself.

> "A reasonable regulation governing the use of property offered for sale so as to prevent fraud, does not destroy that property nor deprive this owner of its

> use in a constitutional sense.
> People vs. Luhrs 195 N.Y. 377, 383."
> People vs. Arlen, supra at p.344.

It is not necessary, moreover, that fraud be either charged or proved against the plaintiff here - although, as is demonstrated in Point I, supra, there is abundant evidence of the fraud in the market place which Regulation 49 is intended to prevent.

> "A business, however honest in itself, may be the subject of governmental regulation if it may become a medium of fraud. It is not enough to say that the business may be honestly conducted. People v . Beakes Dairy Co. 222 N.Y. 416, 427" People v . Arlen, supra at p. 343.

With apparently remarkable prescience, the Court in People v . Arlen, supra, wrote:

> "Ingenuity keeps pace with greed; and the careless and heedless consumers are exposed to increasing perils. People v . Kibler 106 N.Y. 321, 324" 284 N.Y. at p.344

So here the severity and cruelty of the fraud and greed imposed upon consumers are greatly aggravated when the basis of such imposition is discrimination because of race or income group (Point I, supra). Regulation 49, viewed against the evils which it is designed to cure is a reasonable enactment and not a denial of due process.

POINT III

THE COMMISSIONER OF PUBLIC MARKETS HAS AUTHORITY TO PROMULGATE A REGULATION REQUIRING COMMODITIES TO BE LABELLED AS TO PRICE.

The Commissioner of Public Markets of the City of New York is given, both the powers and duties of the Commissioner of Agriculture and Markets of the State of New York as well as the power to enforce laws with regard to weights and measures. Charter of the City of New York §833.

The Agriculture and Markets Law is, as is stated in its declaration of policy and purpose, "...to be deemed an exercise of the police power of the state and a discharge of its obligations for the promotion of general welfare..." Agriculture and Market Law §3.

> "Such laws and all governmental measures adopted pursuant thereto should receive a liberal interpretation and application in furtherance of the aforesaid policy and purpose." Agriculture and Market Law §3.

The spirit and approach thus mandated by the Legislature is peculiarly applicable to the problems to which Regulation 49 is directed.

Regulation 49 is grounded on the power and authority of the Commissioner of Public Markets which are vested in him by the Agriculture and Market Law and the Charter of the City of New York, and particularly on the powers and authority to promulgate regulations with respect to the sale of goods by weight and numerical count under Article 16 of the Agriculture and Markets Law.

Section 196 -a of the Agriculture and Markets Law provides that:

> "The commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary. Such rules and regulations shall be filed with the secretary of state, shall be open for public inspection at the principal office of the department, and shall have the force and effect of law."

Regulation 49, in requiring that commodities be price-tagged is but a facet of the regulation of the sale of goods by weight, measure and numerical count.

In the context of the market, from the points of view of both vendor and consumer, the unit (of weight, measure or numerical count) by which a commodity is sold is of no significance apart from the price at which it is offered. For the consumer to be informed that the carton on the shelf contains one pound of flour leaves him none the less uninformed about the feasibility of making the purchase if he does not know how much one pound will cost. The selling price is as integral a part of the picture the consumer must have as is the weight or measure. Without one, the other is meaningless. One could not conceive that consumers would be advised of the price of the item but left in the dark as to the quantity. The converse is not more rational. Imagine a market which offered coffee for fifteen cents, leaving it to the store-keeper to advise each eager customer whether it was a quarter pound or a half-pound for that price. Is not the sense of shock as strong on learning of markets that offer a pound of coffee, learning of markets that offer a pound of coffee, leaving it to the store-keeper to advise each customer whether it is fifty or sixty cents for that weight.

In exercising authority, therefore, with respect to the weights, measures and numerical counts by which commodities are offered for sale, the Commissioner must, perform and to the same extent, exercise authority with respect to the price. The extent of authority exercised by Regulation 49 is co-terminus with that exercised with respect to weights and measures. The Agriculture and Market Law does not, of course, empower the Commissioner to require that a commodity be offered at a particular weight, measure of count, but, rather, that the weight, measure or count be stated. Similarly, Regulation 49 does not purport to require that any commodity be offered at any particular price, but, rather, that the price be stated.

POINT IV

IF WORKS OF ART ARE NOT COMMODITIES, REGULATION 49 WOULD NOT BE APPLIED TO THEM AND THERE IS NO "CASE OR CONTROVERSY."

A "commodity" is frequently defined as:

> "An element of wealth; an economic good." Webster's Collegiate Dictionary, fifth edition, (Merriam Co., 1948).

Literally applied, this definition would bring works of art within the ambit of "commodities" covered by Regulation 49.

Amicus realizes the many subjective factors which must enter into the determination of the "value" of works of art, as well as the instability of the art market. If for these reasons, works of art are not regarded as ordinary "commodities" within the terms of Regulation 49, the regulation would not be applicable. If this view is correct, there is no "case or controversy" and no further determination of the issues raised would be necessary or proper.

CONCLUSION

WHEREFORE *Amicus* respectfully submits that the complaint should be dismissed and the order to show cause vacated in all respects.

Respectfully submitted,

George Schiffer

George Schiffer, Esq.,
Attorney for *Amicus Curiae*
Congress of Racial Equality
Office & P.O. Address
40 E. 49th Street
New York, New York 10017

Carl Rachlin,
Bernard Sorkin,
Stephen M. Nagler,
Of Counsel.

March 29, 1968

Hon. Edward L. Sadowsky
Councilman
New York City Council
City Hall
New York, New York 10007

Dear Ed:

Enclosed is a copy of Commissioner Pacetta's price-tagging regulation and the brief submitted by our office in the Supreme Court.

I am also enclosing a copy of the bill introduced by Assemblyman Rossetti, forbidding discrimination against welfare recipients in the rental of multiple dwellings. Due to the intercession of our Republican friends in the State Senate, this measure has not become law, although it passed the Assembly last year.

If you think that anything can be done on this subject via the Administrative Code, I can produce tons of memorandums, testimony, and whatever else might be needed in support thereof.

Please let me know your thoughts.

Very truly yours,

Stephen M. Nagler
Associate Legal Director

SMN:gs
Encl.

Federal Trade Commission

GUIDES AGAINST
DECEPTIVE PRICING

Effective January 8, 1964

FEDERAL TRADE COMMISSION

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
A. Everette MacIntyre*
A. Leon Higginbotham, Jr.

Joseph W. Shea, Secretary

---

he statement of Commissioner MacIntyre's position on these
s appears in the press release issued by the Commission at the
he Guides were released to the public.

FEDERAL TRADE COMMISSION
Washington

GUIDES AGAINST DECEPTIVE PRICING *

INTRODUCTION

These Guides are designed to highlight certain problems in the field of price advertising which experience has demonstrated to be especially troublesome to businessmen who in good faith desire to avoid deception of the consuming public. Since the Guides are not intended to serve as comprehensive or precise statements of law, but rather as practical aids to the honest businessman who seeks to conform his conduct to the requirements of fair and legitimate merchandising, they will be of no assistance to the unscrupulous few whose aim is to walk as close as possible to the line between legal and illegal conduct. They are to be considered as *guides*, and not as fixed rules of "do's" and "don'ts," or detailed statements of the Commission's enforcement policies. The fundamental spirit of the Guides will govern their application.

The basic objective of these Guides is to enable the businessman to advertise his goods honestly, and to avoid offering the consumer nonexistent bargains or bargains that will be misunderstood. Price advertising is particularly effective because of the universal hope of consumers to find bargains. Truthful price advertising, offering real bargains, is a benefit to all. But the advertiser must shun sales "gimmicks" which lure consumers into a mistaken belief that they are getting more for their money than is the fact.

GUIDE I - FORMER PRICE COMPARISONS.

One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, *bona fide* price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not *bona fide* but fictitious--for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction--the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at the product was openly and actively offered for sale, for a nably substantial period of time, in the recent, regular course business, honestly and in good faith--and, of course, not for urpose of establishing a fictitious higher price on which a decep- omparison might be based. And the advertiser should scrupulously any implication that a former price is a selling, not an asking (for example, by use of such language as, "Formerly sold at ___"), unless substantial sales at that price were actually made.

---

*/Inquiries concerning these Guides and requests for copies should be addressed to the Bureau of Industry Guidance, Federal Trade Commission, Washington, D. C. 20580.

he following is an example of a price comparison based on a fic- s former price. John Doe is a retailer of Brand X fountain pens, cost him $5 each. His usual markup is 50% over cost; that is, egular retail price is $7.50. In order subsequently to offer an un- "bargain," Doe begins offering Brand X at $10 per pen. He zes that he will be able to sell no, or very few, pens at this inflated . But he doesn't care, for he maintains that price for only a few Then he "cuts" the price to its usual level--$7.50--and adver- "Terrific Bargain: X Pens, Were $10, Now Only $7.50!" This viously a false claim. The advertised "bargain" is not genuine.

ther illustrations of fictitious price comparisons could be given. dvertiser might use a price at which he never offered the article at e might feature a price which was not used in the regular course siness, or which was not used in the recent past but at some re- period in the past, without making disclosure of that fact; he might price that was not openly offered to the public, or that was not tained for a reasonable length of time, but was immediately reduced.

the former price is set forth in the advertisement, whether ac- anied or not by descriptive terminology such as "Regularly," ally," "Formerly," etc., the advertiser should make certain that ormer price is not a fictitious one. If the former price, or the nt or percentage of reduction, is not stated in the advertisement, nen the ad merely states, "Sale," the advertiser must take care he amount of reduction is not so insignificant as to be meaningless. ould be sufficiently large that the consumer, if he knew what it would believe that a genuine bargain or saving was being offered. dvertiser who claims that an item has been "Reduced to $9.99," the former price was $10.00, is misleading the consumer, who understand the claim to mean that a much greater, and not merely nal, reduction was being offered.

DE II - RETAIL PRICE COMPARISONS; COMPARABLE VALUE COMPARISONS.

nother commonly used form of bargain advertising is to offer s at prices lower than those being charged by others for the same chandise in the advertiser's trade area (the area in which he does ness). This may be done either on a temporary or a permanent s, but in either case the advertised higher price must be based upon and not be fictitious or misleading. Whenever an advertiser repre- s that he is selling below the prices being charged in his area for a icular article, he should be reasonably certain that the higher price dvertises does not appreciably exceed the price at which substantial sales of the article are being made in the area--that is, a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving. Expressed another way, if a number of the principal retail outlets in the area are regularly selling Brand X fountain pens at $10, it is not dishonest for retailer Doe to advertise: "Brand X Pens, Price Elsewhere $10, Our Price $7.50."

The following example, however, illustrates a misleading use of this advertising technique. Retailer Doe advertises Brand X pens as having a "Retail Value $15.00, My Price $7.50," when the fact is that only a few small suburban outlets in the area charge $15. All of the larger outlets located in and around the main shopping areas charge $7.50, or slightly more or less. The advertisement here would be deceptive, since the price charged by the small suburban outlets would have no real significance to Doe's customers, to whom the advertisement of "Retail Value $15.00" would suggest a prevailing, and not merely an isolated and unrepresentative, price in the area in which they shop.

A closely related form of bargain advertising is to offer a reduction from the prices being charged either by the advertiser or by others in the advertiser's trade area for other merchandise of like grade and quality--in other words, comparable or competing merchandise--to that being advertised. Such advertising can serve a useful and legitimate purpose when it is made clear to the consumer that a comparison is being made with other merchandise and the other merchandise is, in fact, of essentially similar quality and obtainable in the area. The advertiser should, however, be reasonably certain, just as in the case of comparisons involving the same merchandise, that the price advertised as being the price of comparable merchandise does not exceed the price at which such merchandise is being offered by representative retail outlets in the area. For example, retailer Doe advertises Brand X pen as having "Comparable Value $15.00." Unless a reasonable number of the principal outlets in the area are offering Brand Y, an essentially similar pen, for that price, this advertisement would be deceptive.

GUIDE III - ADVERTISING RETAIL PRICES WHICH HAVE BEEN ESTABLISHED OR SUGGESTED BY MANUFACTURERS (OR OTHER NON-RETAIL DISTRIBUTORS).

Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer.

There are many methods by which manufacturers' suggested retail or list prices are advertised: large scale (often nation-wide) mass-media advertising by the manufacturer himself; pre-ticketing by the manufacturer; direct mail advertising; distribution of promotional material or price lists designed for display to the public. The mechanics

re not of the essence. These Guides are concerned with any
employed for placing such prices before the consuming public.

ere would be little problem of deception in this area if all products
nvariably sold at the retail price set by the manufacturer. How-
the widespread failure to observe manufacturers' suggested or
ices, and the advent of retail discounting on a wide scale, have
sly undermined the dependability of list prices as indicators of
act prices at which articles are in fact generally sold at retail.
ing competitive conditions have created a more acute problem of
ion than may have existed previously. Today, only in the rare
re all sales of an article at the manufacturer's suggested retail
price.

t this does not mean that all list prices are fictitious and all
of reductions from list, therefore, deceptive. Typically, a list
is a price at which articles are sold, if not everywhere, then at
n the principal retail outlets which do not conduct their business
iscount basis. It will not be deemed fictitious if it is the price at
substantial (that is, not isolated or insignificant) sales are made
advertiser's trade area (the area in which he does business).
rsely, if the list price is significantly in excess of the highest
at which substantial sales in the trade area are made, there is a
and serious danger of the consumer being misled by an advertised
ion from this price.

is general principle applies whether the advertiser is a national
tional manufacturer (or other non-retail distributor), a mail-order
alog distributor who deals directly with the consuming public, or
l retailer. But certain differences in the responsibility of these
s types of businessmen should be noted. A retailer competing in
l area has at least a general knowledge of the prices being charged
area. Therefore, before advertising a manufacturer's list price
asis for comparison with his own lower price, the retailer should
ain whether the list price is in fact the price regularly charged
ncipal outlets in his area.

other words, a retailer who advertises a manufacturer's or dis-
or's suggested retail price should be careful to avoid creating a
mpression that he is offering a reduction from the price at which
oduct is generally sold in his trade area. If a number of the
pal retail outlets in the area are regularly engaged in making
at the manufacturer's suggested price, that price may be used
ertising by one who is selling at a lower price. If, however,
price is being followed only by, for example, small suburban
house-to-house canvassers, and credit houses, accounting for
insubstantial volume of sales in the area, advertising of the list
ould be deceptive.

the other hand, a manufacturer or other distributor who does
s on a large regional or national scale cannot be required to
r investigate in detail the prevailing prices of his articles
out so large a trade area. If he advertises or disseminates a
pre-ticketed price in good faith (i.e., as an honest estimate
ctual retail price) which does not appreciably exceed the highest

price at which substantial sales are made in his trade area, he will not be chargeable with having engaged in a deceptive practice. Consider the following example:

Manufacturer Roe, who makes Brand X pens and sells them throughout the United States, advertises his pen in a national magazine as having a "Suggested Retail Price $10," a price determined on the basis of a market survey. In a substantial number of representative communities, the principal retail outlets are selling the product at this price in the regular course of business and in substantial volume. Roe would not be considered to have advertised a fictitious "suggested retail price." If retailer Doe does business in one of these communities, he would not be guilty of a deceptive practice by advertising, "Brand X Pens, Manufacturer's Suggested Retail Price, $10.00, Our Price, $7.50."

It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

GUIDE IV - BARGAIN OFFERS BASED UPON THE PURCHASE OF OTHER MERCHANDISE.

Frequently, advertisers choose to offer bargains in the form of additional merchandise to be given a customer on the condition that he purchase a particular article at the price usually offered by the advertiser. The forms which such offers may take are numerous and varied, yet all have essentially the same purpose and effect. Representative of the language frequently employed in such offers are "Free," "Buy One - Get One Free," "2-For-1 Sale," "Half Price Sale," "1¢ Sale," "50% Off," etc. Literally, of course, the seller is not offering anything "free" (i.e., an unconditional gift), or 1/2 free, or for only 1¢, when he makes such an offer, since the purchaser is required to purchase an article in order to receive the "free" or "1¢" item. It is important, therefore, that where such a form of offer is used, care be taken not to mislead the consumer.

Where the seller, in making such an offer, increases his regular price of the article required to be bought, or decreases the quantity and quality of that article, or otherwise attaches strings (other than the basic condition that the article be purchased in order for the purchaser to be entitled to the "free" or "1¢" additional merchandise) to the offer, the consumer may be deceived.

Accordingly, whenever a "free," "2-for-1," "half price sale," "1¢ sale," "50% off" or similar type of offer is made, all the terms and conditions of the offer should be made clear at the outset.

GUIDE V - MISCELLANEOUS PRICE COMPARISONS.

The practices covered in the provisions set forth above represent the most frequently employed forms of bargain advertising. However, there are many variations which appear from time to time and which are, in the main, controlled by the same general principles. For example, retailers should not advertise a retail price as a "wholesale" price. They should not represent that they are selling at "factory" prices when they are not selling at the prices paid by those purchasing directly from the manufacturer. They should not offer seconds or imperfect or irregular merchandise at a reduced price without disclosing that the higher comparative price refers to the price of the merchandise if perfect. They should not offer an advance sale under circumstances where they do not in good faith expect to increase the price at a later date, or make a "limited" offer which, in fact, is not limited. In all of these situations, as well as in others too numerous to mention, advertisers should make certain that the bargain offer is genuine and truthful. Doing so will serve their own interest as well as that of the public.

These Guides supersede the Guides Against Deceptive Pricing adopted October 2, 1958.

Adopted: December 20, 1963.

Joseph W Shea

Joseph W. Shea,
Secretary.

No. 70

A LOCAL LAW to amend the administrative code of the city of New York in relation to rules and regulations of the department of markets and the punishment for violations thereof.

Be it enacted by the Council as follows:

Section 1. Title A of chapter thirty-six of the administrative code of the city of New York is hereby amended by inserting a new section to follow section 833-3.0, to be section 833-3.1, to read as follows:

833-3.1 Rules and regulations -- The commissioner shall have power to adopt and amend such rules and regulations as may be necessary to carry out his powers and duties.

b. Punishment. Any person who shall violate any such rules and regulations shall be liable to forfeit and pay a civil penalty in the sum of not more than one hundred dollars for each violation.

c. Violations. Any person who shall violate any of such rules and regulations shall be guilty of an offense triable by a magistrate, and punishable by a fine of not less than twenty-five dollars and not more than two hundred fifty dollars for each offense or by imprisonment not exceeding ten days, or by both.

Section 2. This local law shall take effect immediately.

The City of New York, Office of the City Clerk, ss.:

I hereby certify that the foregoing is a true copy of a local law passed by the Council of The City of New York, concurred in by the Board of Estimate and approved by the Mayor on October 6, 1961, on file in this office.

HERMAN KATZ, City Clerk, Clerk of the Council.

Chap 36 § 833

B08-9730

OL7-7092

Andy Young, (Ed Chew, AX7-7779)

Went in local bar, near naval hospital. Bar discriminates. Andy broke window in anger.
Moe Tandler is handling case (Dis Con).
Mr. Kleinman is probation officer. Last
GL4-4224 week.

"SIG & EDDIE'S" on Linden Blvd near Newburgh St. Woman is owner. Window was 1½' x 1'.

5 guys went in week before, & they said they wouldn't serve them because they were negro. Sailors come in.

Call / Moe Tandler at 3 P.M.

234-9656 Mary Bollinger 286 W. 151 St.
Leander Harris (for 4 people).
Can't get into a N.Y.C. Housing Project.

~~Mrs. Carter~~

~~Her brother (Ronald Carter). On Sat, July 31st at about 10:30 P.M. he was visiting a female friend of his & they argued.~~

Jewelry Business –
"Keystone Price".
"Go between" brings in customer. Jeweler says: this is "K P" (2X the real price).
Peddlar chisels down a few bucks.

2. welfare women (co specializes in selling to welfare) complained of statement of $200 price on TV set. Final charge was $600. Much of this was out and out lying about cost.

~~A~~ 1. East River Reform Dems. – Price Survey
Suzan Brownmiller. (Village Voice)

2. Price Survey – Darwin Bolden. (A.A.I.), or Bedford-Stuyvesant Area Svcs. Lionel Howard or Virginia Dawkins, 597 Gates Hy 1-3200

Barnett Levy – Co 7-9800 (Consumer Frauds Bureau)

New Republic (~~Sc~~ Spring, 1965)

James Ridgeway, March 27, 1966 E

"Tour of Supermarkets.

Exec Office of Pres.
Wash D.C.
20506

Price Tagging. President's Committee on Consumer Interests
Esther Peterson

Marie Barksdale, ~~State Office~~

Low income areas - no relation between quality & price. Not because consumer doesn't understand, but because consumer is helpless. Comparative shopping in the area is impossible. Consumer doesn't know he's getting poor quality.

Check 1. "Commodity" = § 369(d) - General Business Law.

L. 1935 - C. 976 § 4.

2. ~~Old English Wage~~ Price Fixing Statute, (W. W. II)

Call!

Lydia Strong, Consumer Reports! 256 Wash St. Mt. Vernon

F.T.C.

Samuel Myers Morgan State College.

Kaplowitz, P. 16-17.

Mark up & quality of goods.

Absence of price tag; determinations of appearance, whether customer was referred by peddler. Peddler gets cut, merchant raises price.

~~Customer~~ Merchant's refer to others & get cut, & charge higher rates. Different merc

Take risks depending

People v Allen (continued)

$5,300
$5,500
$5,700
$6,000

no deprive the owner of its use in a constitutional sense'." (People v. Luhrs, 195 NY 377, 383.)

"'Ingenuity keeps pace w. greed, and the careless & heedless consumer are exposed to increasing perils'." (People v. Kibler, 106 NY 321, 324).

Trade name, grade & quality also had to be stated.

P. 7, * "Very few stores had prices on TV sets. Prices fluctuated according to customers
TV Set: 1. Law Student - $125.00
2. P.R. Housewife - $139; 3. Negro housewife - $200.00
"The Choiceless Shopper: A Comparison Shopping Review of the L.E.S."

---

derived from Old § 193 1951

Sec § 192(d) - Agriculture & Markets Law

Agricultural Committee -

Imitation ~~Food Products~~ [illegible] Dim.

Counsel
Robert Blabey - State Office Bldg. 518 GL 7-2775

Pt. 221 Rules & Regulations

Ie § 193.

Motion for
Temporary injunc comes up 9/9/65

pt of Markets Art 6 - Ad. Code
set up under Agriculture & Markets Law.

Get Comm. Regulations (contact Mr. Mencher in Commr's office)
Also get copy of papers in case (Mr. Joseph Halpern → 3312 402 in Corp. counsel's office.
143-7970 TR5-7100 ~~566 4099~~

Attack based on no authority of Comm to issue regulations.

Bernie Sorkin will help.

sk Prof Kaplowitz + MFY what they know about utility of tagging.

Our view:

1. Regulations of this type are useful & necessary.
   (a) Normal business has no objection,
   1 ~~Well established~~ public need.
   B. CORE has found that especially in poor neighborhoods pricing of articles particularly with installment KS, (eg 25¢/wk.), people never really understand price. Thus these regulations are salutary, & serve interests of all + particularly of poor.
   B, 1. Well established public need.
2. tagging regulations are not price control or inhibit price at which goods may be sold, but merely require fair disclosure & inhibit fraud & ~~misl~~ misleading public. Well w.i. police power (see e.g. trade mark, trade regulations, origin of goods, etc).
3. This dept. has jurisdic to issue ~~these~~ regulations (§261 Ag & Markets Law).

MSS SEDFRE
546

BAILEY, SAMUEL N. VS. PATTERSON, JOE, T.M. JACKSON, MISSISSIPPI
(INTEGRATION of INTER and INTRA STATE TRANSPORT)

Box 3
Folder 16

State Historical Society Of Wisconsin

Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

SAMUEL BAILEY, JOSEPH BROADWATER and
BURNETT L. JACOB, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

JOE T. PATTERSON, Attorney General of
the State of Mississippi, etc., et al.,

Defendants.

CIVIL ACTION

NO.________

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

Preliminary Statement

This suit seeks a temporary injunction enjoining defendants from continuing to enforce certain statutes of the State of Mississippi requiring racial segregation in dining roon, waiting room and rest room facilities maintained by common carriers, to wit: Title 11, ##2351, 2351.5 and 2351.7; Title 28, ## 7784, 7785, 7786, 7786-01, 7787, 7787.5 of Miss. Code Ann. 1952 and any other statutes of the State of Mississippi requiring and permitting such segregation; from continuing to enforce ordinances of the City of Jackson, Mississippi requiring such racial segregation; from continuing to enforce a policy, practice, custom or usage, under color of state law, or city ordinance, of segregating Negro and white passengers on common carriers and with respect to the use of the facilities and services of depots, stations or terminals owned and/or utilized by such carriers for the business of transporting interstate or intrastate passengers for hire; from continuing to enforce a policy, practice, custom or usage of segregation in the facilities and services of the Jackson Municipal Airport.

Plaintiffs submit the following memorandum of points and authorities in support of the motion for temporary injunction.

I. It Is Beyond The Constitutional Competence Of The State To Command That Any Facility Either Shall Be Labeled As Or Reserved For The Exclusive Or Preferred Use Of One Rather Than The Other Of The Races.

Baldwin v. Morgan, 287 F. 2d 750 (C.A. 5, 1961)

II. A State May Not Compel Segregation In The Use Or Maintenance Of Facilities Connected With Transportation Where The Criteria Is Race Or Color.

Baldwin v. Morgan, *supra*.

III. A Railroad Terminal Is Constitutionally Forbidden From Posting Signs And Maintaining Separate Waiting Rooms On The Basis Of Color.

Baldwin v. Morgan, *supra*.

IV. Negroes Engaged In Interstate Or Intrastate Commerce Have A Constitutional Right To Be Free From Discrimination By Police Officers On The Basis Of Race.

Baldwin v. Morgan, *supra*.

V. State Statutes And City Ordinances Requiring Segregation Of White And Colored Races On The Common Carriers Of A City Violate The Due Process And Equal Protection Clauses Of The Fourteenth Amendment.

Browder v. Gayle, 142 F. Supp. 707 (D.C. M.D. Ala. 1956), aff'd
352 U.S. 903

VI. Segregation By A State On The Ground Of Race In Terminal Facilities Which Are An Integral Part Of The Common Carriers Interstate Transportation Operation Violates The Laws Of The United States.

Boynton v. Virginia, _____ U.S. _____, 5 L.Ed.
2d 206 (1960)

VII. Segregation On The Grounds Of Race In TheUse Of Airport Waiting Room Or Restaurant Facilities Violates The Fourteenth Amendment.

Henry v. Greenville Airport Commission,
XXXXXXXXXXXXXXXX
XX 279 F.2d 751 (C.A. 4, 1960)

Coke v. City of Atlanta, 184 F. Supp. 579
(D.C. N.D. Ga. 1960)

VIII. A District Court Has No Discretion To Deny Relief By Temporary Injunction To A Person Who Clearly Establishes By Undisputed Evidence That He Is Being Denied A Constitutional Right.

Henry v. Greenville Airport Commission,
284 F.2d 631 (C.A. 4, 1960)

Bush v. Orleans Parish School Board, et al.,
187 F. Supp. 42 (D.C. E.D. La. 1960)

Tureaud v. Board of Supervisors, 116 F. Supp.
XXXXX 248 D.C. E.D. La. 1953)

Wilson v. Board of Supervisors, 92 F. Supp.
986 (D.C. E.D. La. 1950)

Ludley v. Board of Supervisors, 150 F. Supp.
900 (D.C. E.D. La. XXXX 1957)

Respectfully submitted,

R. JESS BROWN
1105½ Wahhington Street
Vicksburg, Mississippi

CONSTANCE BAKER MOTLEY
10 Columbus Circle
New York 19, New York

THRGOOD MARSHALL
10 Columbus Circle
New York, 19, New York

Attorneys for Plaintiffs

NORMAN C. AMAKER

Of Counsel

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

SAMUEL BAILEY, JOSEPH BROADWATER and)
BURNETT L. JACOB, on behalf of themselves and others similarly situated,)

Plaintiffs,) CIVIL ACTION

v.) NO.________

)

JOE T. PATTERSON, Attorney General of the State of Mississippi, Jackson, Mississippi, etc., et al.,)

)

Defendants.)

MOTION FOR TEMPORARY INJUNCTION

Plaintiffs, upon the annexed complaint, move this Court for a temporary injunction, pending the final disposition of this cause, and as grounds therefor rely upon the allegations of their complaint and show the following:

1. Plaintiffs' constitutional rights to be free from enforced segregation on interstate and intrastate carriers and in the use of bus, railroad and airline terminal facilities in the City of Jackson and State of Mississippi are being violated by the statutes, ordinances, policy, practice, custom, and usage complained of in the complaint.

2. Plaintiffs have a constitutional right to be free from arrest or threat of arrest in the exercise of their rights and cannot be required by state law, policy, custom or usage to submit to such arrest, fines or imprisonment.

WHEREFORE, plaintiffs pray that this Court will take the necessary steps to convene a three judge court as required by Title 28 U. S. C. 2284, and will advance this case on the docket and order a speedy hearing of this action, and will grant a preliminary and permanent injunction enjoining the defendant and each of them, their agents, employees, attorneys, successors and all persons in active concert and participation with them, from:

a) continuing to enforce certain statutes of the State of Mississippi requiring racial segregation on common carriers, in waiting rooms used by common carriers, and rest room facilities maintained by common carriers, i.e., Title 11, Sections 2351, 2351.5 and 2351.7, and title 28, 7784, 7785, 7786, 7786-01, 7787, 7787.5, Mississippi Code Annotated (1952) and any other statute of the State of Mississippi requiring or permitting such segregation.

b) continuing to enforce ordinances of the City of Jackson, Mississippi, requiring racial segregation in waiting rooms and rest room facilities owned and /or maintained and utilized by common carriers.

c) continuing to enforce a policy, practice, custom, regulation or usage, under color of state law or city ordinance, of segregating Negro and White passengers on common carriers and in the facilities and services of the depots, stations, terminals, owned and/or utilized by carriers in connection with their businesses of transporting interstate and intrastate passengers for hire.

d) continuing to enforce a policy, practice, custom and usage of segregation in the facilities and services of the Jackson Municipal Airport including but not limited to the airport restaurant owned and operated by the City of Jackson or owned and leased by the City of Jackson to a private individual for the benefit of airline passengers and the general public.

e) continuing to arrest, harass, intimidate, threaten or coerce the plaintiffs and members of their class in connection with the exercise of their federally protected right to use interstate and intrastate transportation facilities and services without segregation or discrimination against them solely because of race and color.

Plaintiffs also pray that this Court will grant them their costs herein and grant them such other, additional, or further reliefs as may appear to the Court to be equitable and just.

R. JESS BROWN
1105½ Washington Street
Vicksburg, Mississippi

CONSTANCE BAKER MOTLEY
THURGOOD MARSHALL
10 Columbus Circle
New York 19, New York

Attorneys for Plaintiffs

DERRICK A. BELL
NORMAN C. AMAKER
Of Counsel

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

SAMUEL BAILEY, JOSEPH BROADWATER and BURNETT L. JACOB, on behalf of themselves and others similarly situated,

Plaintiffs

CIVIL ACTION

NO________

V.

JOE T. PATTERSON, Attorney General of the State of Mississippi, Jackson, Mississippi

and

THE CITY OF JACKSON, MISSISSIPPI, a Municipal Corporation organized and existing under the laws of the State of Mississippi, Serve: Allen C. Thompson, Mayor of City of Jackson,

and

ALLEN C. THOMPSON, Mayor of the City of Jackson, Mississippi,

and

DOUGLAS L. LUCKY, Commissioner of the City of Jackson and THOMAS B. MARSHALL, Commissioner of the City of Jackson, Mississippi,

and

W. D. RAYFIELD, Chief of Police in the City of Jackson, Mississippi,

and

CONTINENTAL SOUTHERN LINES, INC., Serve: J.T. Vickers, 201 East Pascagoula Street, Jackson, Mississippi,

and

SOUTHERN GREYHOUND LINES, a division of GREYHOUND Corp. Serve: Everett Renegar, 219 No. Lamar Street, Jackson, Mississippi,

and

ILLINOIS CENTRAL RAILROAD, INC., Serve: H. T. Lewis, or any other agent, at Illinois Central Passenger Station, 300 W. Capitol Street, Jackson, Mississippi,

and

JACKSON CITY LINES, Inc. Serve: Alton B. Smith, 800 West Monument Street, Jackson, Mississippi,

and

CICERO CARR, Serve: Cicero Carr at Cicero's Airport Restaurant, Jackson Municipal Airport, Jackson, Mississippi.

Defendants

COMPLAINT

1. The jurisdiction of this Court is invoked pursuant to provisions of Title 28, United States Code, Section 1343(3). This action is authorized by law, Title 42, United States Code, Section 1983. This action is brought to redress the deprivation of rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States [due process and equal protection clauses of the Fourteenth Amendment and Article 1, Section 8, Clause 3, the Commerce Clause of the Constitution and Title 49, United States Code, Section 3(1) (Railroad and Pipeline Carriers) and Section 316(d) (Motor Carriers)]. Plaintiffs have been deprived of these rights, privileges and immunities by the defendants while acting under color of state statutes, city ordinances, state custom and state usage, as hereinafter more fully appears.

2. The jurisdiction of this Court is also invoked pursuant to provisions of Title 28, United States Code, Section 2281 and Section 2284. This is an action to enjoin the enforcement of certain statutes of the State of Mississippi requiring racial segregation on common carriers, and in waiting room and rest room facilities utilized by common carriers, and providing criminal penalties for carriers and persons refusing to abide by such segregation. The statutes sought to be enjoined are Title 11, Sections 2351, 2351.5 and 2351.7, and Title 28, §§7784, 7785, 7786, 7786-01, 7787, 7787.5, Mississippi Code Annotated (1952).

3. This is a proceeding for a preliminary and permanent injunction enjoining defendants and each of them, their agents, employees, attorneys, successors and all persons in active concert and participation with them from:

a) continuing to enforce certain statutes of the State of Mississippi requiring racial segregation on common carriers, in waiting rooms used by common carriers, and rest room facilities maintained by common carriers, i.e., Title 11, Sections 2351, 2351.5 and 2351.7, and Title 28, §§7784, 7785, 7786, 7786-01, 7787, 7787.5, Mississippi Code Annotated (1952) and any other statute of the State of Mississippi requiring or permitting such segregation.

b) continuing to enforce ordinances of the City of Jackson, Mississippi, requiring racial segregation in waiting rooms and rest room facilities owned and/or maintained and utilized by common carriers.

c) continuing to enforce a policy, practice, custom, regulation or usage, under color of state law or city ordinance, of segregating Negro and white passengers on common carriers and in the facilities and services of the depots, stations, terminals, owned and/or utilized by carriers in connection with their businesses of transporting interstate and intrastate passengers for hire.

d) continuing to enforce a policy, practice, custom and usage of segregation in the facilities and services of the Jackson Municipal Airport including but not limited to the airport restaurant owned and operated by the City of Jackson or owned and leased by the City of Jackson to a private individual for the benefit of airline passengers and the general public.

e) continuing to arrest, harass, intimidate, threaten or coerce the plaintiffs and members of their class in connection with the exercise of their federally protected right to use interstate and intrastate transportation facilities and services without segregation or discrimination against them solely because of race and color.

4. This is a class action brought by the plaintiffs on behalf of themselves and on behalf of other Negroes similarly situated and affected by the statutes, ordinances, policies, practices, customs, regulations and usages complained of herein. This class action is brought pursuant to provisions of Rule 23(a)(3) of the Federal Rules of Civil Procedure. The members of the class on whose behalf plaintiffs sue are too numerous to be brought individually before this Court, but there are common questions of law and fact involved, common grievances arising out of common wrongs, and a common relief is sought for each plaintiff and for each member of the class, as hereinafter more fully appears. The named plaintiffs fairly and adequately represent the members of the class on behalf of which they sue.

5. The plaintiffs are: Samuel Bailey, Joseph Broadwater, and Burnett L. Jacob. Each plaintiff is an adult Negro citizen of the United States and of the State of Mississippi, presently residing in Jackson, Mississippi.

6. The defendants in this case are: Joe T. Patterson, Attorney General of the State of Mississippi, the chief law enforcement officer of the State; the City of Jackson, a municipal corporation, organized and existing under the laws of the State of Mississippi; Allen C. Thompson, Mayor of the City of Jackson and chief law enforcement officer of the City; Douglas L. Lucky, a commissioner of the City of Jackson; Thomas B. Marshall, a commissioner of the City of Jackson; W. D. Rayfield, Chief of Police of the City of Jackson; Continental Southern Lines, Inc., also known as Continental Trailways, a Louisiana corporation doing business in Jackson, Mississippi, an interstate motor carrier; Southern Greyhound Lines, a division of Greyhound Corporation, an Illinois corporation doing business in Jackson, Mississippi, an interstate motor carrier; Jackson City Lines, Inc., a Mississippi corporation organized and existing under

the laws of the State of Mississippi, an intrastate motor carrier doing business in the City of Jackson, Mississippi; Illinois Central Railroad Company, Inc., an Illinois corporation doing business in the State of Mississippi, an interstate railroad carrier.

7. Plaintiffs allege, on information and belief, that Continental Southern Lines, Inc., owns and/or operates the Trailways bus depot located at 201 E. Pascagoula Street in the City of Jackson, Mississippi, and utilizes this depot in connection with its business of transporting interstate and intrastate motor passengers for hire.

8. Plaintiffs allege, on information and belief, that the Greyhound Corporation owns and/or operates the Greyhound bus depot located at 219 No. Lamar Street in the City of Jackson, Mississippi, and utilizes said depot in connection with its business of transporting interstate and intrastate motor passengers for hire.

9. Plaintiffs allege, on information and belief, that defendant Jackson City Lines, Inc., maintains an office at 800 West Monument Street in the City of Jackson.

10. Plaintiffs allege, on information and belief, that the Illinois Central Railroad Company, Inc., owns and/or operates the Illinois Central Passenger Station located at 300 West Capitol Street in the City of Jackson, Mississippi, and utilizes said station in connection with its business of transporting interstate and intrastate passengers for hire.

11. Plaintiffs allege that the Jackson Municipal Airport Terminal is owned and operated by the defendant City of Jackson and that the defendant Douglas L. Lucky, Commissioner of the City of Jackson, has direct supervision and control over the said airport and its terminal. Plaintiffs allege that the rest rooms at said terminal are segregated and that Negroes are denied service

upon the same terms and conditions applicable to white persons in the airport terminal restaurant. Plaintiffs allege, on information and belief, that the City of Jackson has leased to one Cicero Carr, an individual, the space in the airport terminal allotted for a restaurant facility and that this restaurant facility is operated by said individual under said lease for the use and benefit of airlines passengers and the general public using the airport..

12. Plaintiffs allege that defendant Joe Patterson, as Attorney General of the State of Mississippi, is under a duty to enforce Title 11, §§2351, 2351.5 and 2351.7 and Title 28, §§7784, 7785, 7786, 7786-01, 7787 and 7787.5 of the Mississippi Code Annotated (1952), and threatens to enforce such laws against plaintiffs and the defendant carriers if said laws are violated by the plaintiffs or the defendant carriers. Plaintiffs allege that these statutes (requiring separate railroad cars, separate partititons on busses, separate rest room facilities, separate waiting rooms, and the posting of signs designating the separate facilities assigned to the Negro race and the separate facilities assigned to the white race) are unconstitutional on their face.

13. Plaintiffs allege that each defendant carrier is enforcing segregation of white and Negro passengers transported by it on its transportation facility and is enforcing segregation in the depots, stations, or terminals owned and/or operated by each carrier and utilized by it, pursuant to the requirements of the statutes set forth above.

14. Plaintiffs allege that the defendant city officials are under a duty to uphold and enforce the provisions of a city ordinance requiring segregation in waiting rooms and rest rooms maintained by common carriers (ordinance adopted January 12, 1956 and recorded in Minute Book "FF" p. 149). Plaintiffs allege that this ordinance is unconstitutional on its face. These defendants have threatened to enforce this ordinance against the

plaintiffs and members of their class if they violate said ordinance.

15. Plaintiffs allege that the defendants, and each of them, acting under color of the laws of the State of Mississippi, referred to herein, and under color of the ordinance of the City of Jackson, referred to herein, have pursued and are presently pursuing a policy, practice, custom and usage of segregating Negro and white persons on all common carriers in the State of Mississippi, in all depots, stations and terminals utilized by common carriers in the State of Mississippi, including the waiting room, rest room, and restaurant facilities of the airport terminal in Jackson, Mississippi.

16. Plaintiffs and members of their class have suffered and shall continue to suffer irreparable injury as a result of the enforcement or threat of enforcement of the state statutes referred to herein, the city ordinance referred to herein, and the policy, practice, custom and usage complained of herein, until such irreparable injury is enjoined by this Court. The plaintiffs have no other speedy or adequate remedy at law to redress the deprivation of rights, privileges and immunities complained of herein. Any other remedy to which the plaintiffs might be remitted would be attended by such uncertainty and delay as to result in further irreparable injury and would lead to frustration and vexation of the plaintiffs and the defendants as public officials and public carriers.

17. The segregation complained of herein subjects plaintiff and members of their class to daily public inconveniences, harass ment, and embarrassment, violates rights secured to plaintiffs and members of their class by the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution and Article 1, Section 8, Clause 3 (Commerce Clause) of the Federal Constitution and by the laws of the United States, Title 49, §§3(1) and 316(d).

WHEREFORE, plaintiffs pray that this Court will take the necessary steps to convene a three judge court as required by Title 28 U. S. C. 2284, and will advance this case on the docket and order a speedy hearing of this action, and will grant a preliminary and permanent injunction enjoining the defendant and each of them, their agents, employees, attorneys, successors and all persons in active concert and participation with them, from:

a) continuing to enforce certain statutes of the State of Mississippi requiring racial segregation on common carriers, in waiting rooms used by common carriers, and rest room facilities maintained by common carriers, i.e., Title 11, Sections 2351, 2351.5 and 2351.7, and title 28, 7784, 7785, 7786, 7786-01, 7787, 7787.5, Mississippi Code Annotated (1952) and any other statute of the State of Mississippi requiring or permitting such segregation.

b) continuing to enforce ordinances of the City of Jackson, Mississippi, requiring racial segregation in waiting rooms and rest room facilities owned and /or maintained and utilized by common carriers.

c) continuing to enforce a policy, practice, custom, regulation or usage, under color of state law or city ordinance, of segregating Negro and White passengers on common carriers and in the facilities and services of the depots, stations, terminals, owned and/or utilized by carriers in connection with their businesses of transporting interstate and intrastate passengers for hire.

d) continuing to enforce a policy, practice, custom and usage of segregation in the facilities and services of the Jackson Municipal Airport including but not limited to the airport restaurant owned and operated by the City of Jackson or owned and leased by the City of Jackson to a private individual for the benefit of airline passengers and the general public.

e) continuing to arrest, harass, intimidate, threaten or coerce the plaintiffs and members of their class in connection with the exercise of their federally protected right to use interstate and intrastate transportation facilities and services without segregation or discrimination against them solely because of race and color.

Plaintiffs also pray that this Court will grant them their costs herein and grant them such other, additional, or further reliefs as may appear to the Court to be equitable and just.

R. JESS BROWN
1105½ Washington Street
Vicksburg, Mississippi

CONSTANCE BAKER MOTLEY
THURGOOD MARSHALL
10 Columbus Circle
New York 19, New York

Attorneys for Plaintiffs

DERRICK A. BELL
NORMAN C. AMAKER
Of Counsel

Greyhound + Trailway

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

SAMUEL BAILEY, JOSEPH BROADWATER and
BURNETT L. JACOB, on behalf of themselves
and others similarly situated,

Plaintiffs

V.

JOE T. PATTERSON, Attorney General of the
State of Mississippi, Jackson, Mississippi
and
THE CITY OF JACKSON, MISSISSIPPI, a Municipal Corporation organized and existing
under the laws of the State of Mississippi,
Serve: Allen C. Thompson, Mayor of the City
of Jackson,
and
ALLEN C. THOMPSON, Mayor of the City of
Jackson, Mississippi,
and
DOUGLAS L. LUCKEY, Commissioner of the City
of Jackson and THOMAS B. MARSHALL, Commissioner of the City of Jackson, Mississippi,
and
W. D. RAYFIELD, Chief of Police in the
City of Jackson, Mississippi,
and
JACKSON MUNICIPAL AIRPORT AUTHORITY, a
public body corporate, Serve: T. A. Turner,
Secretary and Manager of the Jackson
Municipal Airport Authority, c/o Jackson
Municipal Airport, Jackson, Mississippi,
and
CONTINENTAL SOUTHERN LINES, INC., Serve:
J. T. Vickers, 201 East Pascagoula Street,
Jackson, Mississippi,
and
SOUTHERN GREYHOUND LINES, a division of
GREYHOUND CORP. Serve: Everett Renegar,
219 No. Lamar Street, Jackson, Mississippi,
and
ILLINOIS CENTRAL RAILROAD, INC., Serve:
H. T. Lewis, or any other agent, at
Illinois Central Passenger Station,
300 W. Capitol Street, Jackson, Mississippi,
and
JACKSON CITY LINES, INC. Serve: Alton
B. Smith, 800 West Monument Street,
Jackson, Mississippi,
and
CICERO CARR, Serve: Cicero Carr at
Cicero's Airport Restaurant, Jackson
Municipal Airport, Jackson, Mississippi.

Defendants

CIVIL ACTION

NO. 3133

Complaint to enjoin enforcement of illegal state statutes

AMENDED COMPLAINT

Denied

1. The jurisdiction of this Court is invoked pursuant to provisions of Title 28, United States Code, Section 1343(3). This action is authorized by law, Title 42, United States Code, Section 1983. This action is brought to redress the deprivation of rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States [due process and equal protection clauses of the Fourteenth Amendment and Article 1, Section 8, Clause 3, the Commerce Clause of the Constitution and Title 49, United States Code, Section 3(1) (Railroad and Pipeline Carriers) and Section 316(d) (Motor Carriers)]. Plaintiffs have been deprived of these rights, privileges and immunities by the defendants while acting under color of state statutes, city ordinances, state custom and state usage, as hereinafter more fully appears.

Denied

2. The jurisdiction of this Court is also invoked pursuant to provisions of Title 28, United States Code, Section 2281 and Section 2284. This is an action to enjoin the enforcement of certain statutes of the State of Mississippi requiring racial segregation on common carriers, and in waiting room and rest room facilities utilized by common carriers, and providing criminal penalties for carriers and persons refusing to abide by such segregation. The statutes sought to be enjoined are Title 11, Sections 2351, 2351.5 and 2351.7, and Title 28, §§7784, 7785, 7786, 7786-01, 7787, 7787.5, Mississippi Code Annotated (1942), and any other statute of the State of Mississippi requiring or permitting such segregation.

Denied

3. This is a proceeding for a preliminary and permanent injunction enjoining defendants and each of them, their agents, employees, attorneys, successors and all persons in active concert and participation with them from:

a) continuing to enforce certain statutes of the State of Mississippi requiring racial segregation on common carriers, in waiting rooms used by common carriers, and rest room facilities maintained by common carriers, i.e., Title 11, Sections 2351, 2351.5 and 2351.7, and Title 28, §§7784, 7785, 7786, 7786-01, 7787, 7787.5, Mississippi Code Annotated (1942), and any other statute of the State of Mississippi requiring or permitting such segregation.

b) continuing to enforce ordinances of the City of Jackson, Mississippi, requiring racial segregation in waiting rooms and rest room facilities owned and/or maintained and/or utilized by common carriers.

c) continuing to enforce a policy, practice, custom, regulation or usage, under color of state law or city ordinance, of segregating Negro and white passengers on common carriers and in the facilities and services of the depots, stations, terminals, owned and/or operated and/or utilized by common carriers in connection with their businesses of transporting interstate and intrastate passengers for hire.

d) continuing to enforce a policy, practice, custom and usage of segregation in the facilities and services of the Jackson Municipal Airport including but not limited to the airport restaurant owned and/or operated and/or controlled by the Jackson Municipal Airport Authority or owned and leased by the Jackson Municipal Airport Authority to a private individual for the benefit of airline passengers and the general public.

e) continuing (under color of state law, city ordinance, state policy, custom, usage, or regulation) to arrest, harass, intimidate, threaten or coerce the plaintiffs, and members of their class, in connection with the exercise of their federally protected right to use interstate and intrastate transportation facilities and services without segregation or discrimination against them solely because of race and color.

f) continuing to post, or permit to be posted, signs designating facilities set aside for colored and white passengers on the doors, walls, sidewalks, or other places connected with or in the terminals, depots, stations, rest rooms, waiting rooms, lunch rooms or any other passenger facility or service.

Denied

4. This is a class action brought by the plaintiffs on behalf of themselves and on behalf of other Negroes similarly situated and affected by the statutes, ordinances, policies, practices, customs, regulations and usages complained of herein. This class action is brought pursuant to provisions of Rule 23(a)(3) of the Federal Rules of Civil Procedure. The class is composed of Negro citizens and residents of the State of Mississippi and other states who utilize the facilities and services of the defendant carriers located in the City of Jackson, and located in other cities of the State of Mississippi, and who travel in both intrastate and interstate commerce. The members of the class on whose behalf plaintiffs sue are too numerous to be brought individually before this Court, but there are common questions of law and fact involved, common grievances arising out of common wrongs, and a common relief is sought for each plaintiff and for each member of the class, as hereinafter more fully appears. The named plaintiffs fairly and adequately represent the members of the class on behalf of which they sue.

w/o K

5. The plaintiffs are: Samuel Bailey, Joseph Broadwater, and Burnett L. Jacob. Each plaintiff is an adult Negro citizen of the United States and of the State of Mississippi, presently residing in Jackson, Mississippi. Each plaintiff has utilized the facilities and services designated for use by "colored" passengers of the Illinois Central Railroad Terminal, the Trailways bus depot, the Greyhound bus depot, and the Jackson Municipal Airport terminal (except the restaurant facility where Negroes are not served food) located in the City of Jackson.

Each plaintiff has regularly ridden the buses operated by the defendant Jackson City Lines in the City of Jackson. Plaintiff Bailey has used the facilities and services utilized by defendant Continental Southern Lines, Inc., (Trailways) in the City of Meridian, Mississippi. Plaintiff Jacob has utilized the facilities and services of the defendant Greyhound Corporation located in Edwards, Mississippi. Plaintiff Bailey has traveled by Greyhound bus from Jackson, Mississippi to St. Louis, Missouri, and by Illinois Central Railroad to St. Louis and Chicago. Plaintiff Broadwater has traveled by Illinois Central Railroad to Chicago and Cleveland.

6. The defendants in this case are: Joe T. Patterson, Attorney General of the State of Mississippi, the chief law enforcement officer of the State; the City of Jackson, a municipal corporation, organized and existing under the laws of the State of Mississippi; Allen C. Thompson, Mayor of the City of Jackson and chief law enforcement officer of the City; Douglas L. Luckey, a Commissioner of the City of Jackson; Thomas B. Marshall, a Commissioner of the City of Jackson; W. D. Rayfield, Chief of Police of the City of Jackson; the Jackson Municipal Airport Authority, a public body corporate; Cicero Carr, operator of Cicero's Airport Restaurant, Jackson Municipal Airport, Jackson, Mississippi; Continental Southern Lines, Inc., also known as Continental Trailways, a Louisiana corporation doing business in Jackson, Mississippi, an interstate motor carrier; Southern Greyhound Lines, a division of Greyhound Corporation, a Delaware corporation (an Illinois corporation) doing business in Jackson, Mississippi, an interstate motor carrier; Jackson City Lines, Inc., a Mississippi corporation organized and existing under the laws of the State of Mississippi, an intrastate motor carrier doing business in the City of Jackson, Mississippi; Illinois Central Railroad Company, Inc., an Illinois corporation doing business in the State of Mississippi, an interstate railroad carrier.

Admit

Trailways admit

Greyhound W/K

7. Plaintiffs allege, on information and belief, that Continental Southern Lines, Inc., owns and/or operates the Trailways bus depot located at 201 E. Pascagoula Street in the City of Jackson, Mississippi, and utilizes this depot in connection with its business of transporting interstate and intrastate motor passengers for hire.

Greyhound admits

8. Plaintiffs allege, on information and belief, that the Greyhound Corporation owns and/or operates the Greyhound bus depot located at 219 No. Lamar Street in the City of Jackson, Mississippi, and utilizes said depot in connection with its business of transporting interstate and intrastate motor passengers for hire.

W/o K

9. Plaintiffs allege, on information and belief, that defendant Jackson City Lines, Inc., maintains an office at 800 West Monument Street in the City of Jackson.

W/o K

10. Plaintiffs allege, on information and belief, that the Illinois Central Railraod Company, Inc., owns and/or operates the Illinois Central Passenger Station located at 300 West Capitol street in the City of Jackson, Mississippi, and utilizes said station in connection with its business of transporting interstate and intrastate passengers for hire.

W/o K

11. Plaintiffs allege that the Jackson Municipal Airport Terminal is owned and operated by the defendant Jackson Municipal Airport Authority, which Authority has direct supervision and control over the said airport and its terminal. Plaintiffs allege that the rest rooms and other facilities at said terminal are segregated and that Negroes are denied food service in the airport terminal restaurant. Plaintiffs allege, on information and belief, that the Jackson Municipal Airport Authority has leased to one Cicero Carr, an individual, the space in the airport terminal allotted for a restaurant facility and that this restaurant facility is operated by said individual under said lease for the use and benefit of airline passengers and the general public

using the airport. Plaintiffs allege that said Cicero Carr refuses to serve food to Negro airline passengers and Negro members of the public who use the airport terminal pursuant to the statutes, ordinance, policy, custom and usage complained of herein.

12. Plaintiffs allege that defendant Joe Patterson, as Attorney General of the State of Mississippi, is under a duty to enforce Title 11, §§2351, 2351.5 and 2351.7 and Title 28, §§7784, 7785, 7786, 7786-01, 7787 and 7787.5 of the Mississippi Code Annotated (1942), and threatens to enforce such laws against plaintiffs and the defendant carriers if said laws are violated by the plaintiffs or the defendant carriers. Plaintiffs allege that these statutes (requiring separate railroad cars, separate partitions on buses, separate rest room facilities, separate waiting rooms, and the posting of signs designating the separate facilities assigned to the Negro race and the separate facilities assigned to the white race) are unconstitutional on their face.

w/o K ✓

13. Plaintiffs allege that each defendant carrier, except Illinois Central Railroad Company, is enforcing segregation of white and Negro passengers transported by it on its transportation facility and that each defendant carrier, including Illinois Central, is enforcing segregation in the depots, stations, or terminals owned and/or operated by each carrier and utilized by it, pursuant to the statutes, ordinance, policy, custom and usage complained of herein, in the following particulars:

a) defendant Continental Southern Lines, Incorporated and defendant Greyhound Corporation maintain and operate two separate waiting rooms above and/or on the outside door to each of which said carriers have placed or allowed to be placed a sign, one of which reads: "COLORED WAITING ROOM - INTRASTATE PASSENGERS", and the other reads "WHITE WAITING ROOM - INTRASTATE PASSENGERS." On the sidewalk in front of each of the aforementioned separate waiting rooms, there is a sign one of which

Deny
but
admit
signs

reads: "WAITING ROOM - FOR COLORED ONLY, BY ORDER POLICE DEPT.", and the other reads "WAITING ROOM - FOR WHITE ONLY, BY ORDER POLICE DEPT.".

b) defendants Continental Southern Lines, Inc., and Greyhound Corporation enforce and perpetuate separation of the races on their buses through their employees, particularly the bus drivers or operators, who request and/or require Negro passengers to sit toward the rear of the bus, and request and/or require white passengers to sit toward the front of the bus.

c) defendant Jackson City Lines, Inc., enforce and perpetuate a policy of separation of the races in their buses:

(1) by the posting of signs in each bus directing that Negro passengers seat from the rear, and that white passengers seat from the front.

(2) through their employees, particularly the bus drivers or operators, who require Negro passengers to comply with the signs requiring separation of the passengers by race.

(3) through their employees, particularly the bus drivers or operators who follow a procedure, policy or practice of halting the bus if a passenger refuses to comply with the segregation policy and obtaining the assistance of a city police officer to assist in obtaining such compliance.

d) defendant Illinois Central Railroad Company, Inc., maintains and operates two separate waiting rooms on the sidewalk in front of each of which is a sign, one of which reads: "WAITING ROOM - FOR COLORED ONLY, BY ORDER POLICE DEPT.", and the other reads: "WAITING ROOM - FOR WHITE ONLY, BY ORDER POLICE DEPT." Similar signs are placed in the railroad terminal at the bottom of the stairs leading from the trains.

Deny
But
admit
Signs

e) defendants Continental Southern Lines, Inc., Greyhound Corporation and Illinois Central Railroad Company, Inc., each arrest and prosecute or permit to be arrested and prosecuted all passengers who fail to obey the aforementioned signs and seek to use the waiting room and facilities of said waiting rooms on a nonsegregated basis.

14. Plaintiffs allege that the defendant city officials are under a duty to uphold and enforce the provisions of a city ordinance requiring segregation in waiting rooms and rest rooms maintained by common carriers (ordinance adopted January 12, 1956, and recorded in Minute Book "FF" p. 149). Plaintiffs allege that this ordinance is unconstitutional on its face. These defendants have threatened to enforce this ordinance against the plaintiffs and members of their class if they violate said ordinance.

are using & threaten to continue to use their power & authority as state officers to

w/o

15. Plaintiffs allege that the defendants, and each of them, acting under color of the laws of the State of Mississippi, referred to herein, and under color of §§2087.5, 2087.7, and 2089.5 of the Mississippi Code Annotated (1942) as amended in 1960, and under color of the ordinance of the City of Jackson, referred to herein, ~~have~~ pursue~~d~~ and are presently pursuing a policy, practice, custom and usage of segregating Negro and white persons on common carriers in the State of Mississippi, and in all depots, stations and terminals utilized by common carriers in the State of Mississippi, including the rest room and restaurant facilities of the airport terminal in Jackson, Mississippi.

Denies

16. Plaintiffs and members of their class have suffered and shall continue to suffer irreparable injury as a result of the enforcement or threat of enforcement of the state statutes referred to herein, the city ordinance referred to herein, and the policy, practice, custom and usage complained of herein, until such irreparable injury is enjoined by this Court. The plaintiffs have no other speedy or adequate remedy at law to redress the deprivation of rights, privileges and immunities

complained of herein. Any other remedy to which the plaintiffs might be remitted would be attended by such uncertainty and delay as to result in further irreparable injury and would lead to frustration and vexation of the plaintiffs and the defendants as public officials and public carriers.

17. The segregation complained of herein subjects plaintiffs and members of their class to daily public inconvenience, harassment, embarrassment, and arrest, and violates rights secured to plaintiffs and members of their class by the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution and Article 1, Section 8, Clause 3 (Commerce Clause) of the Federal Constitution and by the laws of the United States, Title 49, United States Code, §§3(1) and 316(d).

Private

WHEREFORE, plaintiffs pray that this Court will take the necessary steps to convene a three judge court as required by Title 28 U. S. C. §2284, and will advance this case on the docket and order a speedy hearing of this action, and will grant a preliminary and permanent injunction enjoining the defendants and each of them, their agents, employees, attorneys, successors and all persons in active concert and participation with them, from:

a) continuing to enforce certain statutes of the State of Mississippi requiring racial segregation on common carriers, in waiting rooms used by common carriers, and rest room facilities maintained by common carriers, i.e., Title 11, Sections 2351, 2351.5 and 2351.7, and Title 28, §§7784, 7785, 7786, 7786-01. 7787, 7787.5, Mississippi Code Annotated (1942), and any other statute of the State of Mississippi requiring or permitting such segregation.

b) continuing to enforce ordinances of the City of Jackson, Mississippi, requiring racial segregation in waiting rooms and rest room facilities owned and/or maintained and/or utilized by common carriers.

c) continuing to enforce a policy, practice, custom, regulation or usage, under color of state law or city ordinance, of segregating Negro and white passengers on common carriers and in the facilities and services of the depots, stations, terminals, owned and/or operated and/or utilized by common carriers in connection with their businesses of transporting interstate and intrastate passengers for hire.

d) continuing to enforce a policy, practice, custom and usage of segregation in the facilities and services of the Jackson Municipal Airport including but not limited to the airport restaurant owned and/or operated and/or controlled by the Jackson Municipal Airport Authority or owned and leased by the Jackson Municipal Airport Authority to a private individual for the benefit of airline passengers and the general public.

e) continuing (under color of state law, city ordinance, state policy, custom, usage, or regulation) to arrest, harass, intimidate, threaten or coerce the plaintiffs, and members of their class, in connection with the exercise of their federally protected right to use interstate and intrastate transportation facilities and services without segregation or discrimination against them solely because of race and color.

f) continuing to post, or permit to be posted, signs designating facilities set aside for colored and white passengers on the doors, walls, sidewalks, or other places connected with or in the terminals, depots, stations, rest rooms, waiting rooms, lunch rooms or any other passenger facility or service.

Plaintiffs also pray that this Court will grant them their costs herein and grant them such other, additional, or further reliefs as may appear to the Court to be equitable and just.

R. JESS BROWN
1105½ Washington Street
Vicksburg, Mississippi

CONSTANCE BAKER MOTLEY
THURGOOD MARSHALL
DERRICK A. BELL
10 Columbus Circle,
New York 19, New York
Attorneys for Plaintiffs

NORMAN C. AMAKER
Of Counsel

SEDFRE

BAINES, BRUCE VS. LOUISIANA 1966
(SCHOOL DEMONSTRATION)

Box 34
Folder 17

State Historical Society Of Wisconsin

Please Retain Original Order

#1254A

STATE OF LOUISIANA, PARISH OF ST. HELENA

TWENTY-FIRST JUDICIAL DISTRICT COURT

Into the Honorable the Twenty-First Judicial District Court of Louisiana, setting in and for the Parish of St. Helena, comes now into Open Court the undersigned District Attorney of the Twenty-First Judicial District Court of the State of Louisiana, and with the leave of the Court first obtained, in the name and by the authority of the said State; informs the said Honorable Court that one

Bruce Baines

late of the Parish of St. Helena, on the 2nd day of February in the year of Our Lord, One Thousand, Nine Hundred and Sixty-six (1966), with force and arms, in the Parish of St. Helena and State of Louisiana, aforesaid, and within the jurisdiction of the Twenty-First Judicial District Court of Louisiana, for the Parish of St. Helena, wilfully and unlawfully,

did violate Article 63.4 of the Louisiana Criminal Code by enticing, soliciting, urging and encouraging and procuring other persons to go upon and remain in St. Helena Parish School Board Office Building

Contrary to the form of the statutes of the State of Louisiana, in such cases made and provided and against the peace and dignity of same.

District Attorney for the 21st Judicial District of Louisiana

A true copy April 18th 1966

Shirley G. Cueca

Dep. Clerk of Court St. Helena Parish, La.

STATE OF LOUISIANA	⁞	NUMBER: 1254-A
	⁞	21ST JUDICIAL DISTRICT COURT
VS.	⁞	PARISH OF ST. HELENA
BRUCE BAINES	⁞	STATE OF LOUISIANA

MOTION TO QUASH

NOW INTO COURT through undersigned Counsel, comes BRUCE BAINES, accused herein, and reserving all rights to file additional pleadings, now moves this Honorable Court to Quash the Bill of Information for the following reasons, to-wit:

1.

That Revised Statute 63.4 of the Louisiana Criminal Code is unconstitutional on its face:

a) Because it violates the liberty of freedom of speech guaranteed under the First and Fourteenth Amendments to the United States Constitution.

b) Because it gives defendant only qualified privilege of free speech whereas the Constitution of the United States gives an unqualified common right to free speech.

c) Because it incorporates invalid status in that it delegates authority to private persons on a subjective basis contrary to the State and Federal Constitutions.

d) Because the said statute is not narrowly drawn evidencing a legislative intent to reach conduct posing a threat to a substantial interest which the State may constitutionally prohibit.

e) The statutes under which the defendant is charged are unconstitutional in their application if construed as here to proscribe free speech and assembly.

WHEREFORE YOUR MOVER PRAYS, that after due proof hereon that the Motion to Quash be maintained and that said information be declared null and void and that he be discharged therefrom.

BY ATTORNEY:

MURPHY W. BELL
971 South 13th Street
Baton Rouge, La.

CERTIFICATE

I certify that a copy of the foregoing Motion has this day been served upon the District Attorney for the 21st Judicial District Court by mailing a copy of the same to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April _____, 1966.

MURPHY W. BELL

STATE OF LOUISIANA § NUMBER: 1254-A

VS. § 21ST JUDICIAL DISTRICT COURT

§ PARISH OF ST. HELENA

BRUCE BAINES § STATE OF LOUISIANA

APPLICATION FOR BILL OF PARTICULARS

NOW INTO COURT through undersigned Counsel, comes BRUCE BAINES, reserving his right to file other special pleadings herein, plead that he is unable to properly prepare his defense herein until he is furnished with a Bill of Particulars upon the following:

1. Who are the "other persons" that the accused urged and encouraged to go upon and remain in St. Helena Parish School Board office building, after having been forbidden to do so?
2. Who "forbid" Bruce Baines to entice, solicit, urge, encourage and procure the "other persons" to go upon and remain in St. Helena Parish School Board office building?

WHEREFORE YOUR MOVER PRAYS, that the State of Louisiana, through the District Attorney be ordered by the Court to furnish the said Bill of Particulars above requested, and that service of same be made upon your defendant through undersigned Counsel.

BY ATTORNEY:

MURPHY W. BELL

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau St., N.Y., N.Y.

COLLINS, DOUGLAS & ELIE
2211 Dryades St., New Orleans, La.

CERTIFICATE

I certify that a copy of the foregoing Application has this day been mailed to the District Attorney for the 21st Judicial District Court to his address in Amite, Louisiana.

Baton Rouge, Louisiana, April _____, 1966.

MURPHY W. BELL

STATE OF LOUISIANA	§	NUMBER: 1254-A
VS.	§	21ST JUDICIAL DISTRICT COURT
	§	PARISH OF ST. HELENA
BRUCE BAINES	§	STATE OF LOUISIANA

MOTION FOR JURY TRIAL

NOW COMES BRUCE BAINES, accused herein and moves this Honorable Court for a trial by jury in this cause for this:

-1-

That the accused, a Negro, is a citizen of the State of Louisiana, who is residing in the State of Louisiana, Parish of St. Helena for the sole purpose of assisting Negro citizens to obtain their equal rights and to register to vote; this is contrary to the polices and practices of the said State and Parish, and that mover alleges he will be unable to get a fair trial consistent with the Fifth, Sixth and Fourteenth Amendments to the United States Constitution unless this Motion is granted.

WHEREFORE MOVER PRAYS, that this Honorable Court order a trial by jury in the instant cause.

BY ATTORNEY:

____
MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, New York 10038

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

ORDER

Considering the foregoing IT IS ORDERED that the accused be tried in this cause by a jury of _______ persons, good and true.

Greensburg, Louisiana, ______________, 1966.

____
JUDGE

TELEPHONE
348-3572

MURPHY W. BELL
ATTORNEY AT LAW
971 SOUTH 13TH STREET
BATON ROUGE, LA.

April 22, 1966

Carl Rachlin, Esq.
Legal Director
Scholarship Education &
Defense Fund for Racial Equality
150 Nassau St.
New York, New York 10038

Re: Greensburg, La. cases

Dear Carl:

Enclosed are the Bills of Information and motions that I have filed in the St. Helena Parish cases. These are scheduled for trial May 9, 1966 at Greensburg, Louisiana. I have not bothered to call in Nils and Company because these cases are within the prohibition of Rachel and Peacock. I intend to remove shortly before trial on the merits. This action is merely to build a good State Court record.

Evaluate and criticize--- I stand open to suggestions, etc.

Very truly yours,

MURPHY W. BELL

MWB/mew

Encls.

MSS SEDFRE
546

LEGAL - BALTIMORE (TARGET CITY) MARYLAND, 1966

Bo
Fol

State Historical Society of Wisconsin

Please Retain Original Order

EQUITY SUBPOENA

The State of Maryland

To

UNITED KLANS OF AMERICA,
REALM OF MARYLAND,
KNIGHTS OF THE KU KLUX KLAN, etc.
P.O. Box 7887, Balto. 21, Md.

VERNON J. NAIMASTER

CLAYTON C. BRAUN, SR., sometimes known as
CLAYTON C. BROWN, SR.

CHARLES L. LUTHARDT, SR.

THE CONGRESS OF RACIAL EQUALITY,
BALTIMORE CHAPTER, etc.
2316 E. North Ave., Balto. 16, Md.

WALTER A. CARTER
3322 Brighton St., Balto. 16, Md.

SAMPSON GREEN, JR.
3409 Wabash Ave., Balto. 15, Md.

BARBARA MILLS
2307 Crest Rd., Balto. 9, Md.

JANE DOE, Address Unknown

Richard ~~JOHN~~ DOE, Address Unknown

COPY

of Baltimore City, Greeting:

WE COMMAND AND ENJOIN YOU, That all excuses set aside, you do within the time limited by law, beginning on the first Monday of June next, cause an appearance to be entered for you and your answer to be filed to the complaint of

SAMUEL G. GORN, et al, etc.,

against you exhibited in the Circuit Court of Baltimore City.

HEREOF fail not, as you will answer the contrary at your peril.

WITNESS, the Honorable **MICHAEL J. MANLEY,** Chief Judge of the Supreme Bench of Baltimore City, the 10th day of Jan., 1966
Issued the 4th day of May, in the year 1966

Clerk

MEMORANDUM: You are required to file your answer or other defense in the Clerk's Office, room 410, in the Court House, Baltimore City, within fifteen days after return day, named in the above subpoena. Personal attendance in Court on the day named is not necessary, but unless you answer or make other defense within the time named, complainant (s) may obtain a decree pro confesso against you, which upon proper proof may be converted into a final decree for the relief demanded.
(General Equity Rule 11)

A-48235 (2)

CIRCUIT COURT

A-250
1966 Docket No. ....

SAMUEL C. COHN, et al, etc.

....

vs.

UNITED KLANS OF AMERICA, etc., et al

....

COPY

Subpoena To Answer Bill Of Complaint

No. A-48235

(2)

Filed .... *day of* ...., *19* ....

H. Vernon Eney
Solicitor.

....
Address.

Bd

March 24, 1966

Fred E. Weisgal, Esq.
111 North Charles Street
Baltimore, Maryland

Dear Fred:

I herewith enclose a Memorandum of Law which I believe should be useful to you with regard to the Maryland Freedom Union. It covers several points, most of which I assume are familiar to you. Nevertheless, mapping out the various problems such as:

A. What the Maryland Freedom Union needs to qualify as a union under the National Labor Relations Act.

B. The procedure to obtain recognition with regard to the contract expiring on or about June 18. Please keep in mind that the current rule of the NLRB requires our petition for an election be filed in the period 90-60 days prior to the exploration of the contract on or about June 18. In other words the petition for presentation by the Maryland Freedom Union must be filed no later than April 17.

C. Questions concerning the Labor Management Reporting and Disclosure Act are analysed in this regard. We will have to prepare within 90 days a constitution and by-laws. All of this is set forth in the memorandum.

D. The most difficult question is the so-called Contract Bar Rule of the NLRB which we will have to overcome. It is an exception to the Contract Bar Rule called the "schism" which under limited circumstances permits a new union to petition for an election despite an existing contract.

We are analyzing further the possibility of trying to develop an exception upon the theory that these contracts, as you and I have discussed, are unconscionable. A thought occurred to me that we might try to use an analogy of the Uniform

The Baltimore Chapter of CONGRESS OF RACIAL EQUALITY CORE

COMPLAINANTS' EXHIBIT A

A local chapter of a national organization working to abolish racial discrimination by utilizing the process of nonviolence.

[illegible] W. NORTH AVENUE BALTIMORE 16, MARYLAND 669-[illegible]—LA 3-7779

NATIONAL ADVISORY COMMITTEE
James Baldwin
E. Stanley Jones
Martin Luther King, Jr.
A. J. Muste
A. Philip Randolph
Ira DeA. Reid
Lillian Smith

NATIONAL DIRECTOR
James Farmer

BALTIMORE HONORARY ADVISORY BOARD
Rev. Dennis Barrow
Solomon Baylor
William R. Birt, M.D.
Helen W. Brown
Clarence Bishop
Dr. Shirley A. Clinton
Una Corbett
A. Garland Chissell, Jr., M.D.
John T. Chissell, M.D.
Edward A. Chance
Cleveland Chandler
Bailey Conaway
Robert Clark
Rev. Herbert O. Edwards
Homer Favor
Billy D. Davis, D.D.S.
Sidney Daniels
Rev. Vernon Dobson
Walter T. Dixon
Frank F. Furstenberg, M.D.
Rev. Thomas Fraser
Jerome D. Frank
Elliott W. Galkin
Edward Gilliam
Benjamin G. Gordon
Jimmy Green
Philathea Hall
Irving Hawkins, Jr.
William Henry
Sidney Hollander, Sr.
Sidney Hollander, Jr.
Joseph Howard
Adah Jenkins
Mrs. Mary S. Johnson
Thomas C. Jones, M.D.
Earl Koger
Edgar A. Love, Bishop
Edwin S. Mills
Adolph Motley, Sr.
Frances D. Murnaghan, Jr.
Howard H. Murphy
Irving R. Murray
Margaret H. Neustadt
Rev. Henry J. Offer
Sonia F. Osler
Ida Kemp Passano
David Pearlman
Addison W. Pope, M.D.
Benjamin Quarles
Uthman Ray, Jr., M.D.
Dr. Lawrence Reddick
Norman V. A. Reeves
Hal Smith
Vernon W. Sparks
Clem Venture
Judge Robert B. Watts
Verda F. Welcome
Fred E. Weisgal
Chester L. Wickwire
Rev. Frank [illegible]iams

April 15, 1966

Mr. Samuel Gorn
Horizon House
Calvert and Chase Streets
Baltimore 3, Maryland

Dear Mr. Gorn:

Having had no reply to our letter of February 17, we assume that you have not changed your position regarding a public commitment to a policy of open occupancy.

The enclosed material will make our reaction clear. If at any time you should like to make a public commitment to our "seven demands", further demonstrations will, of course, no longer be needed. Another copy of the demands are enclosed and can be returned to us with your signature at any time or may be released publicly as you desire.

Yours sincerely,

Barbara Mills

BarbaraMills, Co-Chairman
Housing Committee

Sampson Green

Sampson Green, Co-Chairman
Housing Committee

EXECUTIVE COMMITTEE
James Griffin
John Burleigh
Barbara Mills
Walter Carter
[illegible] Belt
[illegible]ates
[illegible]geloff
Irwin Auerbach
William Bush
Barbara Coleman
Carolyn Stith
Dave Eberhart
Fred [illegible]
War[illegible] Jr.
Margaret Patterson
Lawrence Hawkins
Lloyd Taylor
James Divers
Marcia Kallen
John Gee

COMPLAINANTS' EXHIBIT B

THESE ARE THE OPEN OCCUPANCY PROPOSALS SUBMITTED TO SAMUEL GORN, PRESIDENT APARTMENT HOUSE OWNERS ASSOCIATION OF MARYLAND, INC.

CORE seeks the co-operation of all builders, owners, managers and financers involved in apartment development in arranging a meeting to discuss the following proposals.

1. Apublic declaration of support for integrated housing in the arranging for financing and building of all apartments in the entire Baltimore metropolitan area.

2. A further declaration of a policy of "open occupancy" in the selling and rental of all apartment units.

3. In accordance with this policy of open occupancy, all apartment house advertising will state, as part of the advertisement, "Rentals on an Open Occupancy Basis".

4. All advertisements for apartments will appear in both Negro and white news media so that members of both groups will be fully informed of the new policy.

5. Negroes, as well as whites, will be employed to "show" model apartments to the public. They will also be employed as apartment managers and in the Real Estate Management offices.

6. Both as an association and as individuals connected in any way with apartment development, positive steps will be taken in a community education campaign to prepare them for acceptance of city and state "Open Occupancy" laws. Similar educational steps will be taken within your own organizations to prepare yourselves and your employees.

7. Public support will be given to new efforts to pass a City and State "Open Occupancy" bill.

A delegation presented these proposals to Mr. Gorn, personally, at his office on July 9th 1965 and he agreed to arrage a meeting with the Executive Board of The Apartment House Owners in approximately two weeks. The delegation: E.J. Van de Castle (CIC), Ruth Wolf Rosenthal (CPHA), Agnes A. Magrogan, Richard T. Lawrence, Rev. T.S. Rowan (Archdiocesan Inner City Program), Robert M. Latane (Balto. County League for Human Rights), John Garofalo, Walter Carter, Dave Eberhardt, Barbara Mills, Tom Lewis, John Roemer, and Hal Smith (Baltimore CORE).

Walter Carter, Housing
Chairman Baltimore CORE

COMPLAINANTS' EXHIBIT C

BREAK THE NOOSE FROM THE CAPTIVE HOUSING MARKET

Since last November, three Fair Housing Bills and a Rent Strike Bill have gone down to defeat. LET'S START WHERE WE LEFT OFF AT THE RALLY AND MARCH AGAINST SLUMS AND SEGREGATED HOUSING AD GET THE JOB DONE! We can't wait till '68 and depend on the politicians.

BREAK THE
from the
NOOSE
CAPTIVE GHETTO

OPENING DEMONSTRATION

Time - Sunday, April 17, 1966
1:30 p.m. - Question and Answer time
2:00 p.m. - Prompt departure for target

Meeting Place - Harvey Johnson Community
Center of the Union Baptist Church
1219 Druid Hill Avenue near Dolphin

FOLLOW-UP DEMONSTRATIONS - Same time and place every Sunday. Come regularly.

INITIAL TARGET - Samuel Gorn's Horizon House. Gorn also manages Jamestown (a modestly priced town-house-apartment development) and has a new apartment development opening soon.

FOLLOW - UP TARGETS - Joseph Meyerhoff - king-pin of the builders and financers (reasonably-priced housing and apartment developments circling the city).

Robert and Harry Meyerhoff - another king-pin building company specializing in modestly-priced apartments within the city limits.

Wallace Campbell - Baltimore's major apartment manager (a "cover-agent" for many seggy owners)

W. Burton Guy - on the Real Estate Board of Greater Baltimore and also Vice President on the National Association of Real Estate Boards - Manager of The Carlyle (which recently openly rejected a Negro applicant solely on the grounds of race) and a major realtor in the sale of houses all over the city and in the ghetto.

Edward A. Myerberg - maintains a large lily-white development in the suburbs while he rings the ghetto with Negro apartments which announce, "Not allowed beyond this point". FHA continues to finance all this segregated building.

WHY THESE TARGETS?

1. These are the king-pins that could change the whole segregationist policy of the real estate and building industry in metropolitan Baltimore if they would respond to the obvious human need and grasp the reins of leadership in our community that should and could be theirs.

2. We have asked them to come out in public support of open occupanc [illegible] have hidden behind the "need for [illegible]slation" but

none have even made public pronouncements favoring such legislation. Of course, even if they had they knew passage was unlikely and meaningful enforcement even less likely.

3. We ask that they voluntarily open their apartments to all people and to carry out this policy by stating it publicly in all advertisements, instructing their staff to implement it and reviewing its progress periodically to make sure of compliance.

4. All have refused to take the leadership necessary for voluntary open occupancy on the grounds of mistrust of each other in complying, lack of time to make the effort, and fear of losing business. Where "accidents" have occured, the fact that business has not been hurt seems to prove nothing to them. They still will not declare an open policy in those apartments. The need to extend the same rights of citizenship to the Negro American which are taken for granted by all other citizens escapes them.

WHY START WITH HORIZON HOUSE?

Firstly, because it's where we left off but more important Gorn's answer is the City's answer is Pica's answer to its Negro citizens --- NEVER! NOWHERE! IN OUR CITY ARE YOU TO LIVE WITH HUMAN DIGNITY!! We'll cut-price you, out-vote you, exclude you and abuse you. You shall not penetrate any further into the sacred white community and, furthermore, we'll remove you from the City Center ---We'll tie the knot and choke you tighter and tighter into a more and more congested and limited housing market until we can squeeze out all your decency, your dignity and your humanity, until we can drain you of all your dollars by exploitation and speculation, until the walls crumble around you -- And then we hope you'll just vanish in the dust of the decay and we'll have our new hi-rise city back again for the rich whites, we'll still have our lily-white suburbs and any old housing remaining can be taken over by the poor whites. At least they don't look different. IS THIS WHAT YOU WANT? ARE WE GOING TO LET THIS PROCESS CONTINUE? ARE YOU GOING TO BOW TO THIS DECISION? LET'S FIND OUT "WHAT WILL TOPPLE THE DECADENT POWER STRUCTURE -- AND LET'S TIE THE WHOLE SEGREGATED HOUSING INDUSTRY TO THIS STRUCTURE AND TURN IT TOPSY TURVEY -- IT'S TIME THEY STOPPED GETTING RICH AT OUR EXPENSE AND STARTED CONSIDERING THE RIGHTS AND NEEDS OF ALL CITIZENS.

As the City gets hot and we get hotter, we'll move to the freshness of the suburbs with their shade trees and swimming pools.

COMPLAINANTS' EXHIBIT C (continued)

We would appreciate your taking the time to phone us or send us a postcard indicating:

1. Whether you will be there on April 17?
2. How frequently we can count on you to be with us on follow-up demonstrations?
3. Whether you think we ought to demonstrate on both Saturday and Sunday. (We might be able to organize one group for Saturdays and another for Sundays.)
4. Whether you prefer Saturday or Sunday demonstrations?
5. What are your first and second choices from the six listed targets around which you think we could build the most effective program to destroy the whole pattern of segregated housing in metropolitan Baltimore? Think of their influence in the industry, mobilizing public opinion - and people for demonstrating, accessibility, etc.

CORE - 2316 W. North Avenue
669-6034
Sampson Green - Barbara Mills
Co-Chairmen, Housing Committee

COMPLAINANTS' EXHIBIT C (continued)

Baltimore

May 2, 1966

TO: Floyd McKissick and Lincoln Lynch

FROM: Herbert Callender, Director of Organization

RE: Field Trip to Midwest, West Coast and Baltimore, Md.

Baltimore:

I arrived in Baltimore, Md. on April 14th and immediately set up meetings with the staff that is working in Baltimore around the many problems that exist. I discussed with them the possibly of street meetings that would begin to mobilize large numbers of people around the problems of housing, ghetto schools and the lack of adequate welfare. Plans were laid for this kind of Organization with sound equipment going throughout the ghetto announcing the street meetings. We began to make contact with people who had once been active in the local chapter, but who had,for one reason or another become inactive. Some of them felt that the chapters actio should be geared in the black communities of Baltimore and not in areas where they could not afford to live even if they had good job We were able to convience most of them that our new direction would be based in the ghetto and they agreed to come out and support us.

The Maryland Freedom Union is preparing to launch a massive drive on Pennsylvania Avenue for the unionization of retail store workers. This project, although starting intially on the West side of Baltimore, will also carry on its activities on the east side of town where stores are located who have an affiliation with the stores that are being boycotted on the west side of town. For example, as I put this report together, there has been a recognition agreement signed by Silberman's , who also has four stores in the metropolitan area of Baltimore, three of which are on the west side and the other being on the east side. Pennsylvania Avenue is the Lenox Avenue of Baltimore.

I saw a tremendous need for some massive fund-raising activity to begin around the activities of both the MFU and the CORE projects. Baltimore is truly a CORE city and the enthusiam around the choice of it as a target city by CORE is very evident. The Postal Allience, the churches and the community has accepted us with open arms. We could really begin the drive toward having the projects there support themselves if we would only put some people into the Baltimore area to handle fund raising and public relations. The need and the potential is there, I just hope that we won't miss the boat.

On Sunday, April 17th, I took part in the chapter demonstration around a middle and upper middle income housing development. CORE had about 125 people on the picket line. The KKK were across the street watching and taking notes on our actions. At one point, a CORE member was hit with a sign being carried by one of the KKK. The police refused to remove the KKK member to a neutral side of the street. The demonstrations will continue every Sunday. As I write this report I am aware of a situation that took place om May 1st, where the KKK marched with 60 members in full dress regali and their storm trooper guards. Klan activity promises to increase as our demonstrations continue.

Reccomendations:

1. Immediate expenses for the project office located at 832 North Gay Street so that the project office and sleeping quarters can be established for staff.

2. Public relations and fund-raising personnel be provided on a permenant basis to the project immediately.

3. Fund-raising activity be established and Maryland Freedom Union be included in whatever funds are supplied.

4. Walter Brooks, project director be given a raise to $5200 per year to equal the job he is doing on project.

5. Additional staff be provided to the project as soon' as humanly possible so as to allow for all areas of activity outlined in the Baltimore prospectus to become activated.

Comments:

It is my feeling that the above mentioned things should be done without hesitation if Baltimore is to become truly a "CORE Target City." The Klan activity is very "hot and heavy" in Baltimore City and one never knows what may and when it may happen. We need PR to be on hand at all times to cover the activities. Publicity is the key to fund-raising and we should all keep it in mind. I think that when there is action within CORE, we begin to get in some donations, thus, we should make an honest attempt to have every action covered by a person trained to do PR work. The field staff that we now have in Baltimore are just that, they are field persons and can handle that end of the job. Now we need someone trained in PR and fund-raising to handle that end of it. We can really make Baltimore a beautiful thing if we just have enough insight to get the ball rolling now. I therefore strongly urge that we implement the items' listed above.

COLUMBUS, OHIO

I arrived in Columbus, Ohio on April 18th and met with Mrs. Marlene Wilson, chairman of Columbus CORE and Nac represenative from the Mid-west region. We discussed the NAC procedures regarding the decision around the appointment of our new National Director. There was some confusion among chapter people as to why this appointment had to take place without it being brought first to the chapters and then to the National convention. I explained the logic behind the NAC decision according to the National Constitution. That explanation seemed to bring some much needed light to bear around that subject. One question that continued to be raised was the increase in the salary of the National Director in view of our financial situation and no answer I gave seemed to satisfy them. We met well into the morning around the aforementioned matters and touched upon the varied needs of the Mid-West region in the way of staff and training programs.

The Columbus CORE chapter is presently engaged in the organizing of a "Poor People's Board" which is the coalition of several neighborhood organizations located mainly in the ghetto. They are in direct oposition to the established poverty board and its projected program. It is their feeling that the poverty board, as it is presently set up, is not represenative of the poor people nor of the program that is needed by them. The poor people's board, which was organized largely through the efforts of CORE, consists of some 17 neighborhood groups. It is their hope that they will include a large number of other community groups who are not participating in the activity and that they can gear the program towards other meaningful issues in the ghetto.

I was deeply impressed with the chapters ability to submerge their own image and ego inorder to build community leadership, i.e. the chapter committee structure has been broken down to allow whatever community organization that exist to go on with the promise that when a group is established, leadership can emegge from the people who have been organized. For those who give argument that CORE's image will also be submerged and that they will never get recognition for the job that is being done, Columbus CORE serves as a clear example of what can be done when a groups dedication is to the people in the ghetto and not to the setting up of an aristocracy in the community. The local people in Columbus want CORE at this point to institute and organize a membership drive with their help. This came solely out of the community's wanting to show their graditude to CORE for the help and advice they have given to the community.

I am asking the Columbus chapter to prepare a paper explaining how they broke their committee structure down and began to get into the community to do some meaningful community organizing. Their experiences and methods might prove workable in many other areas where chapters are having a problem around this new directio

Mike Lesser, an ex field secretary, was present at one of the meetings and the question of his termination was asked. I gave a complete and straightforward answer and that was the end of that

Reccomendations:

1. Every effort possible to set-up a training workshop for the chapter and community people.

2. Hire additional field staff person to replace Mike Lesser.

3. Keep in constant touch with the chapters in the Mid-west so as to learn of what they are doing.

Comments:

It was really an inspiring thing to see a chapter so involved in the business of what CORE is now about. From most chapters, we hear that they just don't know how to go about getting into the community. I was happy to see that this chapter had enough insight to go out and make an honest attempt at it. I believe that they are well on their way to FREEDOM.

Dayton, Ohio

Arrived in Dayton on April 20th along with Tony Perot, field secretary in the Mid-West region. I met with the Dayton Non-Violent Direct Action Committee and the Dayton Alliance for Racial Equality, both of whom have applied for affiliation with CORE. These two groups seemed to have come out of a split of the old CORE chapter when it was disaffiliated and the old arguments seem to still be going on between these groups. At first, when an attempt to bring them together was mantioned, I received a flat NO, especially from the NVDAC, but after some talking, I was able to convience them that that the only way I would even consider their applications was for the two groups to get together and attempt to iron out their differences, they decided to set up such a meeting. At the meeting I suggested that each group talk over the possiblity of them coming together as one group with free elections. DARE agreed to do this if the NVDAC would go along. On April 21st at the last meeting the NVDAC refused to get together with DARE and asked that National CORE make a judgement on their group on its own merits.

I stated at that time that since the two groups had both asked for affiliation, it would be wise to get together and present a unified front since they both were going to be working toward the same goals. I further stated that, I would not give either group a favorable recomendation unless they joined together. I asked the DARE group to continue their efforts to bring the groups together and keep us abreast of the situation in Dayton. I was assured that these efforts would continue even though DARE felt that they would be fruitless.

Recommendation:

That the above groups not be considered until they can get together among themselves and iron out their differences. It is my feeling that if they have this much difficulty within, they will probably have twice as much trouble on the outside with other groups. To affiliate two groups in Dayton would be illogical at this time. I found DARE to be cooperative and willing to do all that they could to bring about some understanding, however, both groups are weak.

Chicago, Ill.

I arrived in Chicago on April 22nd and met with Robert Lucas, chairman of Chicago CORE. After some discussion with him and Tony Perot, I found that the Chicago chapter situation was all a jumble There are presently four units in Chicago, the West side, South side, the near North side and the North side, with each of them having a chairman and other officers. Each unit believes itself to be autonomous.

Bob Lucas is the chairman of the executive board that meets and forms the Chicago chapter of CORE. The chairman of the Westside unit, Mr. James Cage, recently sent a letter to National asking for an investigationof Chicago CORE. I met with him and found that he is somewhat off and certainly disruptive at a chapter meeting. He has extreme nationalist views and is hungup on his own improtance as a unit chairman.

We discussed each chapter persons point of contention and heard a report from each unit. I raised the question around what each unit was doing in its own community and the answers that were offered were vague and showed that they were not doing anything meaningful to eliminate the problems that exist in Chicago. At this meeting a postal worker was present and he explained that he had been attempting to become a member of CORE for approx. a month and was never able to get the chance to speak because fo all the bickering and constant arguments. He further explained that the community had very little respect for CORE because when they came to a CORE meeting they walked out in total disgust after hearing what took place at them. After sitting in this meeting for some four hours, Tony Perot and myself offered our opinions of what we saw as the problem in Chicago within CORE and offered the following suggestions:

1. All units come together and form one CORE chapter.
2. The chapter talk with the community and select a target and work on it as a united group.

It was our impression from looking at the community and speaking with some of the people that CORE is really needed in Chicago and if they would begin to work in the areas of schools, housing and employment in a meaningful way, a number of the problems that exist, would be solved.

There is a boycott going on around the Gennis school and only a few of the chapter people are working on it at the present time. I suggested that maybe that was something the chapter could work on and show the power structure and the community that they are attempting to do something good in the community

Recommendations:

1. The chapter be placed on probation for a period of two (2) months.

2. The chapter be ordered to abolish unit system and become one (1) working CORE chapter.

3. If no improvement is seen in the two months that the group be disaffiliated.

Comments :

I was able to meet Al Raby of CCCO in Chicago and with other members of the SCLC training program. I left Tony Perot behind to arrange a meeting with Dr. King, Rev. Vivian and Andy Young and to relay the answer to me as soom as possible. We should hear from them in the very near future.

Los Angeles, Calif

I arrived in Los Angeles on April 22nd and was met by our field secretary in that region, Lou Smith. Operation Bootstrap was in the process of having a block party and had the streets around the office blocked. They had some 400 to 450 people in attendance. The purpose of this block party was to gain community support for the Bootstrap project and its activities. It turned our to be a gala affair and the community, I discovered later, was 99% behind Bootstraps. It is really a beautiful operation. They have made contacts with businessmen to give electronic equipment to the project for the purpose of training community people to do the jobs they otherwise would not be able to handle. I really think that it will prove to be the most profitable thing CORE has going for itself, even if the name of CORE is not connected with it, in the way of community organizing. We should all take notice of this and begin to try this idea in more areas of the country.

L.A. CORE has certainly proven to be a total disappointment. It is a group of middle-class snobs. The people in the chapter has refused to begin to get out into the community and abide by the 1965 Convention mandate that chapters begin to move toward organizing the community. They are not gearing themselves to meet the needs of the community, it is fragmented and uses most of its time having internal fights. After having met with the chapter chairman, who is certainly a charming and beautiful person, I feel that unless some action is taken around this chapter, they will never begin to meet the needs of the community. I will offer my fair recommendations for this group at the end of this area report.

I was able to visit Bakersfield CORE in the San Waqene Valley and discovered that they are barely hanging on and has desperately asked for some kind of help from the National office, what they really need and want is some trainign around community organizing. They are trying but lack the proper training in this area. No industry is allowed to come to this area and the only means of employment is farm labor. After having met with several CORE groups in this valley and the San Bernadino Valley, I discovered that, as Lou Smith has been pleading, there is a desperate need for additional help in this region. The travel time is emense and even two men couldn't handle this vast region. Most of the areas on the west-coast are ripe for a riot this summer unless some drastic changes are made around the conditions under which they live. I would say that Watts, Bakersfield and Oakland are the areas that bear watching.

Recommendations:

1. L.A. CORE be placed on a two (2) month probationary period, with the understanding that they are to make an honest attempt to begin to work in the community on meaningful issues.

2. Operation Bootstrap be given National CORE's financial, moral and spiritual help.

3. Additional help be given to the western region immediately, if not sooner.

3. Weekly reports be submitted to the National office from the chapter, Lou Smith and Oree Dyes, the NAC rep in that area.

4. Willie Wilbourn chairman of San Bernadino CORE be hired as a field secretary to give Lou Smith the immediate help that is essential for that region. He is constantly doing volunteer work in that area now. He has shown to me and more importantly, to Lou Smith that he is field secretary material. I strongly urge that he be placed on the payroll as soon as we recieve the information on him from Lou Smith.

Comments:

I feel that CORE, at this point, cannot allow and has no choice, but to cut off infected fingers before the entire organization manages to get that same image. Hard decisions will have to be made and I am willing to make them and take whatever comes with that. I feel that paper chapters cannot be allowed to remain that, like Chicago and LA., the time to act is now, and I truly believe that in the long run they will prove to be fruitful to the movement and give an opportunity for new leadership to develop in many communities that have numerous problems.

I strongly urge that the above mentioned recommendations be given all the consideration they are deserving of.

3 HVE:nml 5/4/66 35502

SAMUEL G. GORN,
5700 Smith Avenue,
Baltimore, Maryland,

MORTON GORN,
5700 Smith Avenue,
Baltimore, Maryland,

t/a EMESS MANAGEMENT COMPANY,
a Maryland partnership
with offices at
5700 Smith Avenue,
Baltimore, Maryland,

Complainants,

v.

UNITED KLANS OF AMERICA,
REALM OF MARYLAND, KNIGHTS
OF THE KU KLUX KLAN, an
unincorporated association,
P. O. Box 7887,
Baltimore, Maryland 21221,

VERNON J. NAIMASTER,
678 Middlesex Road,
Baltimore County, Maryland,

CLAYTON C. BRAUN, SR.,
sometimes known as
CLAYTON C. BROWN, SR.,
Route 11, Box 163,
Pasadena, Anne Arundel
County, Maryland,

CHARLES L. LUTHARDT, SR.,
Box 305 A-12 Rt. #1,
Glen Burnie, Anne Arundel
County, Maryland,

THE CONGRESS OF RACIAL EQUALITY,
BALTIMORE CHAPTER, an unincorporated association,
2316 East North Avenue,
Baltimore, Maryland 21216,

WALTER A. CARTER,
3322 Brighton Street,
Baltimore, Maryland 21216,

SAMPSON GREEN, JR.,
3409 Wabash Avenue,
Baltimore, Maryland 21215,

BARBARA MILLS,
2307 Crest Road,
Baltimore, Maryland 21209

IN THE
CIRCUIT COURT
OF
BALTIMORE CITY

Docket
Folio
No.

JANE DOE, :
Address unknown,
:
and
:
RICHARD DOE,
Address unknown, :

Defendants. :

- : - : - : - : - : - : - : -

ORDER

Upon a consideration of the foregoing Bill of Complaint, Affidavit and Exhibits, it is this 4th day of May, 1966, by the Circuit Court of Baltimore City,

ORDERED,

1. A hearing on the issuance of an interlocutory injunction as prayed for in the Bill of Complaint filed herein is hereby set for 10 o'clock A. m. E.D.S.T. on Friday, May 6, 1966.

2. A copy of the Bill of Complaint and of this Order shall be served forthwith upon the Defendants, Vernon J. Naimaster, Clayton C. Braun, Sr., Charles L. Luthardt, Sr., Walter A. Carter, Sampson Green, Jr. and Barbara Mills and a copy of the Bill of Complaint and of this Order shall be mailed to the Defendants, United Klans of America, Realm of Maryland, Knights of the Ku Klux Klan, and The Congress of Racial Equality, Baltimore Chapter. Additional copies of the Bill of Complaint and of this Order shall be deposited with the Clerk of this Court and shall be by him delivered to any person requesting the same on behalf of the Defendants, United Klans of America, Realm of Maryland, Knights of the Ku Klux Klan, and The Congress of Racial Equality, Baltimore Chapter, or any of the other Defendants named in the Bill of Complaint. Each such person

so requesting a copy of the Bill of Complaint or of this Order shall furnish his name and address to the Clerk who shall enter such name and address and the fact that the Bill of Complaint and this Order was delivered to such person and the time thereof in the file pertaining to this proceeding.

Charles D. Harris
Judge

TRUE COPY
TEST

Henry J. Reppergen CLERK

JANE DOE, :
Address unknown, :

and :

RICHARD DOE, :
Address unknown, :

Defendants. :

- : - : - : - : - : - : - : -

BILL OF COMPLAINT FOR INJUNCTION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Bill of Complaint of Samuel G. Gorn and Morton Gorn, trading as the Emess Management Company, a partnership doing business under the laws of the State of Maryland with offices in Baltimore, Maryland, respectfully represents unto your Honor:

1. The Complainants, Samuel G. Gorn and Morton Gorn, copartners trading as the Emess Management Company, are engaged in the business of operating and managing real estate in the City of Baltimore and elsewhere. Among other real estate properties operated and managed by the said partnership is the apartment house or building known as the "Horizon House" located at the northeast corner of Calvert and Chase Streets in the City of Baltimore, State of Maryland, which said apartment house or building is operated and managed by the aforesaid partnership for the account of and as the agent of the owners of said apartment building, Horizon House Associates, a partnership of the State of Maryland. The said Horizon House Associates as the owners of said apartment house have designated the Emess Management Company as the exclusive agents of the said owners to rent, operate and manage the said apartment house building and, as such, the Complainants, trading as the Emess Management Company, have the sole and complete responsibility and authority to manage the said apartment house for the owners thereof.

2. On information and belief, the Complainants

aver that the Defendant, United Klans of America, Realm of Maryland, Knights of The Ku Klux Klan, hereinafter referred to as the Defendant Ku Klux Klan, is an unincorporated association of individuals whose chief purpose or aim, or at least one of whose purposes and aims, is the supremacy of the white race and the suppression and segregation of non-white and other racial groups. On the basis of public statements attributed to leaders of the national organization with which the Complainants believe the Defendant Ku Klux Klan is associated, and on the basis of statements by and literature circulated by persons claiming to be local leaders of the said Defendant Ku Klux Klan, and on the basis of signs and placards carried by persons professing to be and acting as members of the Defendant Ku Klux Klan, the Complainants believe and therefore aver that the said Defendant Ku Klux Klan and the national organization of the same name with which it is affiliated, are militant and aggressive in seeking to achieve their objectives and have threatened and do threaten to resort to violence against persons and property in order to achieve such objectives.

3. The Defendant, Vernon J. Naimaster, has represented himself to employees of the Complainants, to the public press and to others as the leader or "Grand Titan" of the Defendant Ku Klux Klan. On information and belief, the Complainants aver that in addition to participating in the demonstrations hereinafter described, he has assisted in the organization, encouragement and direction

of and is otherwise responsible for the participation of other members of the said Defendant Ku Klux Klan in such demonstrations.

4. The Defendant, Clayton C. Braun, Sr., has represented himself to the public press and to others as the "King Kleagle" of the Defendant Ku Klux Klan, and as such is sometimes referred to as "chief organizer" or "enforcer" for said Defendant. On information and belief, the Complainants aver that in addition to participating in the demonstrations hereinafter described, he has assisted in the organization, encouragement and direction of and is otherwise responsible for the participation of other members of the said Defendant Ku Klux Klan in such demonstrations.

5. The Defendant, Charles Luthardt, is a candidate for the Democratic nomination for Governor of the State of Maryland and is reputed to be the leader of an organization known as The Fighting American Nationalists. He had represented himself in the public press as being the "white supremist candidate". He has participated in the demonstrations hereinafter described and has indicated to the Complainants, to some of their employees and to others that he intends to continue to do so.

6. The Defendant, Congress of Racial Equality, Baltimore Chapter, popularly known and hereinafter referred to as the Defendant CORE, advertises itself as a "local chapter of a national organization working to abolish racial discrimination by utilizing the process of non-violence"

but is known as an aggressive, militant, active group which seeks to achieve its objectives and compel others to recognize and comply with such objectives by various economic pressures and demonstrations, picketing, sit-ins, stand-ins, wade-ins and other similar tactics.

7. The Defendant, Walter Carter, has represented himself to the Complainants and to others as the Chairman of the Special Projects Committee of the Defendant CORE, and your Complainants are informed and advised that as such he presently serves as a leader and director of the activities of its members. On information and belief, the Complainants aver that as such Chairman, he has participated in the demonstrations hereinafter described and has also assisted in the organization, encouragement and direction of and is otherwise responsible for the participation of other members of the said Defendant CORE, in such demonstrations.

8. The Defendant, Sampson Green has represented himself to the Complainants and to others as a co-chairman of the Housing Committee of the Defendant CORE and as such co-chairman he presently serves as a leader and director of the activities of its membership insofar as they pertain to housing in the Baltimore area. On information and belief the Complainants aver that in addition to participating in the demonstrations hereinafter described, he has assisted in the organization, encouragement and direction of and is otherwise responsible for the participation of other members of said Defendant CORE in such demonstrations.

9. The Defendant, Barbara Mills, has represented herself to the Complainants and to others as a co-chairman

of the Housing Committee of the Defendant CORE and as such co-chairman she presently serves as a leader and director of the activities of its membership insofar as they pertain to housing in the Baltimore area. On information and belief the Complainants aver that in addition to participating in the demonstrations hereinafter described, she has assisted in the organization, encouragement and direction of and is otherwise responsible for the participation of other members of said Defendant CORE in such demonstrations.

10. The aforementioned Horizon House is an 18-story high-rise apartment building. It has a 133 foot frontage on the east side of North Calvert Street and a 147 foot frontage on the north side of East Chase Street. There are 212 apartment units in the building and at the present time approximately 200 persons reside therein. On the street level there are various commercial enterprises such as a drug store, a beauty shop and a valet shop. The second floor of the building is occupied by various medical doctors for their professional offices. The main entrance doors to the building are located on Calvert Street at street level, approximately 70 feet from the corner of Calvert and Chase Streets, in the center of the Calvert Street frontage of said building. While the said main entrance doors open on the same level as the public sidewalk, they are set back approximately three to five feet therefrom and are on private property. The front wall to the building is also set back from the public sidewalk for a distance of three to five feet and set off therefrom by brick walls approximately one to two feet in height with iron rail fences on

top thereof approximately one to two feet in height, at the corners of the said Horizon House. Said walls do not extend across the entire frontage on Calvert Street, but are limited to 10 to 25 feet in length at each corner. On the Calvert Street side of the building, the public sidewalk is about 11 feet in width, but trees planted by the City of Baltimore and the protective wire fencing thereon reduce the available walking space to approximately seven feet. On the Chase Street side of the building, the public sidewalk is about ten feet in width, but trees planted by the City of Baltimore and the protective wire fencing thereon reduce the available walking space to approximately 5-1/2 feet. There is a service entrance and automobile ramp on Chase Street, approximately 70 feet from the corner thereof with Calvert Street, in the center of the Chase Street frontage of the building.

11. The Defendant CORE under date of April 15, 1966, addressed a letter to Samuel G. Gorn, one of the Complainants, said letter being signed by the Defendants Barbara Mills and Sampson Green. The said letter enclosed two documents; one of one page and the other of two pages. The letter and enclosures warned the Complainant that unless he acquiesced and made a "public commitment" to the "seven demands" of the Defendant CORE as outlined on the one page enclosure, demonstrations against Horizon House, as outlined in the two page enclosure, would commence on Sunday, April 17, 1966, and continue every Sunday thereafter until the Complainants capitulated to the "seven demands" of the

Defendant CORE. A xerox copy of said letter and two enclosures are filed herewith as part hereof and marked respectively Complainants' Exhibits A, B and C.

12. On Sunday, April 17, 1966, the Defendant CORE conducted a demonstration at Horizon House from the hour of 2 p.m. until 4 p.m. Approximately 70 persons took part in this demonstration under the name of the Defendant CORE and subject to the direction and supervision of the Defendants, Sampson Green and Barbara Mills. The demonstration was carried out by marching, shouting, singing and chanting persons or demonstrators who carried various signs and shouted slogans such as "Horizon House must fall" and "Down with Horizon House", in addition to chanting or singing so-called "freedom songs" in a loud and raucous manner. The demonstrators marched around Horizon House on the east side of Calvert Street and the north side of Chase Street, for approximately the entire length of the frontage of Horizon House on both of said streets. The marching was done in the form of a loop so that demonstrators were moving in both directions on the sidewalks on each of the aforesaid streets in such a manner as to greatly hinder ingress and egress to and from said Horizon House and to interfere with normal public use of the sidewalks.

13. At the same time that demonstrators under the direction and supervision of the Defendant CORE and the Defendants Sampson Green and Barbara Mills (sometimes hereinafter referred to as the "CORE demonstrators") were marching around Horizon House, as aforesaid, the premises were subject to a counter-demonstration by the Defendant

Charles Luthardt who also carried a sign and marched in such a manner that he was moving in a direction opposite to that of the CORE demonstrators and on at least one occasion a serious altercation between the said Defendant Charles Luthardt and one of the CORE demonstrators was prevented only by the prompt action of police officers.

14. The Complainants were informed by statements in the public press that on Sunday, April 17, 1966, the Defendant, Vernon J. Naimaster appeared at the northwest corner of the intersection of Calvert and Chase Streets opposite Horizon House at the time when the abovementioned demonstration in front of the Horizon House by the Defendant CORE was in progress and when interrogated said that he was "merely observing". Subsequently the said Defendant Vernon J. Naimaster telephoned to an employee of the Complainants and indicated that he and other members of the Defendant Ku Klux Klan would engage in counter-demonstrations to those being conducted by the Defendant CORE in front of Horizon House.

15. On Sunday, April 24, 1966, the Defendant CORE conducted another demonstration at Horizon House from the hour of 2 p.m. until 4 p.m. Approximately 50 persons took part in this demonstration under the name of the Defendant CORE and subject to the direction and supervision of the Defendants Sampson Green and Barbara Mills. The demonstration was again in the form of marching, shouting, singing and chanting persons or demonstrators and, in general, was of the same type and character as that of the previous Sunday,

April 17, 1966, except that Baltimore City police officers did not allow the CORE demonstrators to march on Calvert Street north of the main entrance to Horizon House.

16. At the same time the aforesaid premises were again subjected to a counter-demonstration by the Defendant Charles L. Luthardt who also heckled CORE demonstrators and speakers who replied in like manner to him. Baltimore City police officers limited the marching by the said Defendant Charles Luthardt to the area on Calvert Street north of the main entrance to Horizon House.

17. On Sunday, May 1, 1966, the Defendant CORE again conducted a demonstration at Horizon House from the hour of 2 p.m. until 4 p.m. Approximately 50 persons took part in this demonstration under the name of the Defendant CORE and subject to the direction and supervision of the Defendants Sampson Green and Barbara Mills. The demonstrations were again in the form of marching, shouting, singing and chanting demonstrators who carried various placards with such slogans as "Down with the Captive Housing Market", "Freedom to Escape the Ghetto" and "Break the Noose from the Housing Ghetto". Police officers limited the marching by the CORE demonstrators to the area on Calvert Street south of the main entrance to the said Horizon House, and the north side of Chase Street for approximately the entire frontage of said Horizon House on Chase Street. The marching was again in the form of a loop so that CORE demonstrators were moving in both directions on each of the aforesaid streets. As the CORE demonstrators marched they again

sang, chanted and yelled in a loud and raucous manner to the disturbance and annoyance of the tenants in said Horizon House and other persons living in the area. When the demonstration by the CORE demonstrators was completed, they formed a circle with interlocking arms on the east side of Calvert Street south of the main entrance to Horizon House, for the purpose of hearing a harangue by one of their leaders. The said group of CORE demonstrators completely blocked the public sidewalk on the east side of Calvert Street and prevented all pedestrian traffic thereupon while the meeting was in progress.

18. At the same time that the CORE demonstrators were marching around Horizon House on Sunday, May 1, 1966, other persons attired in white robes and hoods and identified by signs and other means as being members of the Defendant Ku Klux Klan, appeared and began counter-demonstrations in front of Horizon House. On information and belief, the Complainants aver that the said demonstrators, hereinafter referred to as "Klan demonstrators", were led by the Defendants Vernon J. Naimaster and Clayton C. Braun, Sr., who participated in said demonstration. The Klan demonstrators numbered approximately forty persons and, in addition to wearing white robes with hoods, carried large signs containing such slogans as "The Only Good Nigger Is A Dead Nigger", "Press Attacks KKK With Lies", "Vote Right, Vote White", and "Civil Rights For Whites Too!". In addition to the Klan demonstrators who wore robes and hoods, there were other Klan demonstrators present in military type uniforms with boots and helmets. Such uniformed Klan demonstrators

carried large club-like flashlights, although it was mid-afternoon, and were accompanied by three large dogs, of the kind sometimes referred to as police dogs, on leash. In addition, many of the signs or placards carried by Klan demonstrators were mounted on heavy wooden posts or standards. The Baltimore City police present at the time of said demonstrations limited the marching by the Klan demonstrators to the east side of Calvert Street north of the main entrance of the Horizon House in order to avoid a collision between said Klan demonstrators and the aforesaid CORE demonstrators.

19. At the time of the demonstrations conducted in front of Horizon House by Klan demonstrators and CORE demonstrators on May 1, 1966, as aforesaid, the Defendant, Charles L. Luthardt, Sr., also again appeared and participated in said demonstration by marching up and down in front of Horizon House carrying a large sign or placard. After the demonstration by the Klan demonstrators ceased, the Defendants, Clayton C. Braun, Sr. and Charles L. Luthardt, Sr., mounted the steps of a nearby house and harangued the assembled Klan demonstrators. They were heckled by CORE demonstrators and the Complainants believe that a physical clash between the two demonstrating groups was prevented only by the prompt action of Baltimore City policemen.

20. The demonstrations by the Klan demonstrators, the CORE demonstrators and the Defendant, Charles L. Luthardt, Sr., on Sunday, May 1, 1966, were conducted by such a large

number of persons walking in such close proximity to each other as to completely prevent normal use of the sidewalk on Calvert Street in front of Horizon House by the general public and by persons desiring to enter or leave Horizon House during the hours of said demonstration. Shouting, taunting, singing, chanting and other noise occasioned by the said demonstrators have caused great disturbance to the tenants residing in Horizon House and other persons living within the immediate area and, conducted in the numbers and in the manner in which said demonstrations were conducted on Sunday, May 1, 1966, the demonstrations constitute a public nuisance and deprive the tenants in the said Horizon House and other persons living in the immediate area of the peaceful and quiet enjoyment of their places of residence. The said demonstrations have also caused large groups of other persons to gather in the area of Calvert and Chase Streets on other corners, interfering with traffic and causing great commotion, annoyance and disturbance to the residents of the area, including the residents of Horizon House. The Complainants have been informed by representatives of the Defendant CORE and of the Defendant Ku Klux Klan and by the Defendant Charles L. Luthardt, Sr., that each of them intends to continue such demonstrations and counter-demonstrations on each Sunday in the manner aforesaid until their respective aims are achieved.

21. On the past several Sundays during the course of said demonstrations, some demonstrators or representatives of the Defendant CORE, have also placed themselves directly

in front of the main entrance doors of Horizon House on Calvert Street in such manner as to greatly hinder and interfere with the normal use of said entrance doors by persons desiring to enter and leave Horizon House notwithstanding the fact that in so doing they have been trespassing on the private property of the owners of Horizon House. Such activities of such representatives of the Defendant CORE have persisted notwithstanding requests of the Complainants to said persons to desist from such activities and to remove themselves from the private property belonging to Horizon House. Such activities are unlawful and have greatly inconvenienced and annoyed residents of Horizon House and other persons using said main entrance during the time of such demonstrations.

22. The activities of the Defendants in conducting said demonstrations and counter-demonstrations on Sunday, May 1, 1966, received wide coverage in all news media, including newspapers, radio and television, on a national, regional and local basis. Such publicity is bound to attract numerous undesirable persons desiring to cause disorder, and representatives of the Defendant CORE have informed members of the Baltimore City Police Department that they anticipate that other persons not members of CORE will participate in future demonstrations and such representatives of CORE have stated that they cannot and will not be responsible for the orderly conduct of such demonstrators who are not members of the Defendant CORE. The public sidewalks in front of and on the side of Horizon House are relatively narrow and mass demonstrations by large numbers of persons not only

completely prevent normal public use of such widewalks and greatly interfere with and hinder use of such sidewalks by residents of the area, including residents of Horizon House, but also bring the demonstrators and counter-demonstrators into such close proximity to each other as to make physical contact between the opposing groups almost unavoidable. This situation is fraught with danger and is aggravated by the fact that many demonstrators carry large signs, some of which as indicated above are mounted on heavy wooden poles or standards sufficiently large to cause serious injury to any person struck by them. The Complainants are fearful that a renewal of such demonstrations in force and uncontrolled will result in a public riot with great danger of causing serious personal injury to participants and even to innocent bystanders and likely also to cause serious damage to property. The Complainants and their counsel have discussed the situation with the Police Commissioner and the Chief Inspector of the Police Department of Baltimore City and both have indicated that although the police will do everything in their power to preserve peace and prevent disorder, nevertheless, in their opinion the situation is highly dangerous and one which could very easily erupt into a riot, difficult if not impossible to control, and one which could very easily result in serious injury to persons participating therein and to others. As indicated above, the demonstrations have not been confined to public property; on the contrary, both the CORE demonstrators and the Klan demonstrators have trespassed on the private property of Horizon House and have stood on the wall separating the said private property from the public sidewalk for the purpose of haranguing and shouting to other demonstrators. This private property has also been used as a place to stock the various signs and placards being carried by the demonstrators.

23. Next Sunday, May 8, 1966, will be celebrated as Mother's Day, and the Complainants anticipate that numerous persons will desire on this occasion to visit with their relatives who are tenants in Horizon House. The threatened continuance of the demonstrations by all the Defendants on this coming Sunday afternoon in renewed force will greatly and seriously

incommode and inconvenience the residents of Horizon House and persons desiring to visit them and your Complainants are convinced that such demonstrations will, unless either prohibited or greatly restricted and regulated by this Court, completely deprive these Complainants and their tenants in Horizon House of the peaceful and quiet enjoyment of the Mother's Day Sunday to which they as citizens are entitled, and Horizon House and the public streets immediately surrounding it and in the immediate area will become a battleground for violent persons of conflicting ideologies.

24. The Defendants are not persons who are engaged in a single industry, trade or craft, nor are they employees of one employer, or members of the same or an affiliated organization of employers or employees. The controversy between the parties hereto is not one between:

(a) One or more employers or associations of employers and one or more employees or associations of employees;

(b) One or more employers or associations of employers and one or more employers or associations of employers; or

(c) Between one or more employees or associations of employees and one or more employees or associations of employees. The controversy between the parties hereto does not involve any conflicting or competing interest in a labor dispute of persons participating or interested therein, as these terms are defined in Section 74 of Article 100 of the Annotated Code of Maryland.

25. The Complainants have already sustained serious, substantial and irreparable injury and damage by reason of the

actions and conduct of the Defendants. Unless immediate relief is granted by this Court, further irreparable injury and damage will result, not only to the Complainants, but to their tenants residing in Horizon House, the business establishments located therein and the general public. These losses, while substantial, are and will be very largely immeasurable and irrecoverable from the Defendants.

WHEREFORE, the Complainants pray that this Honorable Court may by its Order:

A. Direct the issuance of an ex parte injunction enjoining and restraining the Defendants and each of them and all persons associated with them or acting in concert with them or acting on their behalf or under their instruction or leadership or at their request from conducting, participating in, or inviting, inducing or encouraging others to conduct or participate in any demonstrations or picketing at Horizon House or on the public sidewalks adjacent thereto or on any of the four corners of the intersection of Calvert and Chase Streets in Baltimore, Maryland, pending a hearing by this Honorable Court on the propriety of issuing an interlocutory injunction enjoining and restraining or restricting and regulating the conduct of such demonstrations at such locations.

B. After a hearing, direct the issuance of an interlocutory injunction enjoining and restraining the Defendants and each of them and all persons associated with them or acting in concert with them or acting on their behalf or under their instruction or leadership or at their request from conducting, participating in, or inviting, inducing or encouraging others to conduct or participate in any demonstrations or picketing at Horizon House or on the public sidewalks adjacent thereto or on any of the four corners of the intersection of Calvert and Chase Streets in Baltimore, Maryland, in any manner except such as shall be explicity permitted by such injunction.

C. After hearing on the merits, direct the issuance of a final injunction enjoining and restraining the Defendants and each of them and all persons associated with them or acting in concert with them or acting on their behalf or under their instruction or leadership or at their request from conducting, participating in, or inviting, inducing or encouraging others to conduct or participate in any demonstrations or picketing at Horizon House or on the public sidewalks adjacent thereto or on any of the four corners of the intersection of Calvert and Chase Streets in Baltimore, Maryland, in any manner except as shall be explicity permitted by such injunction.

D. Enjoin the Defendants and each of them and all persons associated with them or acting in concert with them or acting on their behalf or under their instruction or leadership or at their request from trespassing on the private property belonging and adjacent to Horizon House during the course of any demonstrations or at any other time.

E. Grant unto the Complainants such other and further relief as the nature of their case may require.

AND, AS IN DUTY BOUND, etc.

H. Vernon Eney

Wilbur E. Simmons, Jr.

Samuel G. Gorn
Complainant

Venable, Baetjer and Howard
1400 Mercantile Trust Building
Baltimore, Maryland 21202
PLaza 2-6780

Solicitors for Complainants

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:-

I HEREBY CERTIFY that on this   day of May, 1966, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared SAMUEL G. GORN, one of the Complainants and made oath in due form of law that the matters and facts set forth in the foregoing Bill of Complaint are true as therein set forth to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

____

Notary Public

TITLE OF THE CASE

ORDER FOR INTERLOCUTORY INJUNCTION

The above case coming on to be heard on the prayer of the Bill of Complaint for an interlocutory injunction and pursuant to the order entered herein on May 4, 1966, the parties and their counsel were heard, evidence was adduced, the proceedings were read and considered, and the Court being of the opinion that an interlocutory injunction should issue as prayed pending the final determination of this cause, it is thereupon on this   day of May, 1966, by the Circuit Court of Baltimore City,

ORDERED, that:

1. The Defendants, United Klans of America, Realm of Maryland, Knights of the Ku Klux Klan, and all members thereof, the Defendants, Vernon J. Naimaster and Clayton C. Braun, Sr., and all persons associated with them or acting in concert with them or acting on their behalf or under their instruction or leadership or at their request in connection with the demonstrations herein referred to are for the purposes of this Order designated and hereinafter referred to as Klan demonstrators. The Defendant, Charles L. Luthardt, Sr., and all persons associated with him or acting in concert with him or acting on his behalf or under his instruction or leadership or at his request in connection with the demonstrations herein referred to are for the purposes of this Order designated and hereinafter referred to as Luthardt demonstrators. The

Defendant, The Congress of Racial Equality, Baltimore Chapter, and all members thereof, the Defendants, Walter A. Carter, Sampson Green, Jr. and Barbara Mills, and all persons associated with them or acting in concert with them or acting on their behalf or under their instruction or leadership or at their request in connection with the demonstrations herein referred to are for the purposes of this Order designated and hereinafter referred to as CORE demonstrators.

2. For purposes of this Order, the public streets and sidewalks of Chase and Calvert Streets in Baltimore, Maryland for a distance of two hundred feet north, east, south and west of the intersection of said two streets are hereinafter referred to as the Restricted Area and are divided into five zones as follows:

Zone A - The entire area in the street beds between the curb lines of Calvert and Chase Streets for a distance of two hundred feet north, east, south and west of the intersection of said streets.

Zone B - The public sidewalks on the north side of Chase Street for a distance of two hundred feet east from Calvert Street and on the east side of Calvert Street for a distance of two hundred feet north of Chase Street.

Zone C - The public sidewalk on the south side of Chase Street for a distance of two hundred feet east of Calvert Street and on the east side of Calvert Street for a distance of two hundred feet south of Chase Street.

Zone D - The public sidewalks on the south side of Chase Street for a distance of two hundred feet west of Calvert Street and on the west side of Calvert Street for a distance of two hundred feet south of Chase Street.

Zone E - The public sidewalks on the north side of Chase Street for a distance of two hundred feet west of Calvert Street and on the west side of Calvert Street for a distance of two hundred feet north of Chase Street.

3. The Defendants and each of them and all Klan demonstrators, all Luthardt demonstrators, all CORE demonstrators and all other persons having notice or knowledge of this Order be and they are hereby enjoined and restrained from conducting, participating in or inviting, inducing or encouraging others to conduct or participate in any standing, sitting, lying prone, walking or marching demonstrations or picketing in the Restricted Area except in the manner explicitly permitted by paragraph 4 of this Order, or engaging in any other conduct or activities in the Restricted Area prohibited by paragraphs 5, 6 and 7 of this Order.

4. Demonstrations shall be permitted in Zones B, C, D and E of the Restricted Area but shall be limited to the following conduct and activities:

A. No more than five Klan demonstrators and five Luthardt demonstrators and five CORE demonstrators shall be permitted in Zone B at any one time during a demonstration and the members of each of such groups of demonstrators shall confine their conduct, activities and demonstrations to such portions of Zone A as shall from time to time during demonstrations be assigned to them respectively by the senior officer of the Baltimore City Police Department on duty at the scene. Such senior police officer present shall assign Zone B among the three groups of demonstrators in such manner that each group of demonstrators shall have a fair proportion of the available sidewalk area but so that no group of demonstrators shall have occasion to come any closer than fifteen feet to any other group of demonstrators.

B. No more than five Klan demonstrators shall be permitted in Zone _____ at any one time during a demonstration. No Luthardt or CORE demonstrators shall be permitted in Zone _____ at any time during a demonstration.

C. No more than five Luthardt demonstrators shall be permitted in Zone _____ at any one time during a demonstration. No Klan or CORE demonstrators shall be permitted in Zone _____ at any time during a demonstration .

D. No more than five CORE demonstrators shall be permitted in Zone _____ at any one time during a demonstration. No Klan or Luthardt demonstrators shall be permitted in Zone _____ at any time during a demonstration.

E. No demonstrators shall walk or march during the period of a demonstration, but each demonstrator shall remain in one spot and no demonstrator shall be closer than fifteen feet to any other demonstrator at any given time.

F. All signs or placards carried by demonstrators shall be either paper, cardboard, plastic or similar soft material and no signs or placards shall be mounted on any metal, wooden or other pole or standard larger than 1/2 inch in diameter or 1/2 inch square.

5. No demonstrations whatsoever shall be conducted at any time in Zone A by any Klan demonstrators, or any Luthardt demonstrators, or any CORE demonstrators, or any other persons having knowledge or notice of this Order, nor shall any of them

park motor vehicles or occupy parked motor vehicles in said zone at any time during demonstrations in other zones of the Restricted Area.

6. The following conduct and activities are prohibited to all demonstrators in each of the zones of the Restricted Area during demonstrations:

A. No dogs or other animals shall accompany any demonstrator.

B. No demonstrator shall carry any knife, stick, billy, club, or any other tool or device such as a large flashlight which could be used as a club, or any other dangerous weapon or potential weapon of any kind.

C. No demonstrator shall be permitted in Zone A in the area beneath the marquees in front of the Calvert Street or Chase Street entrances to Horizon House.

D. No demonstrators shall engage in yelling, shouting or speaking above a normal conversational tone or level, or engage in group clapping of hands or stamping of feet in such manner as to create loud sounds or noise or otherwise disturb the public peace and quite.

E. No demonstrators shall engage in loud or raucous singing or chanting, or continuous singing or chanting, but singing in a quiet manner at reasonable intervals shall be permitted.

7. No demonstrator shall at any time during demonstrations stand, lie prone, walk, march on or otherwise use or encroach upon the private property of Horizon House or conduct any activities whatsoever in any portions of the

Restricted Area except the public portions of the sidewalks included in Zones B, C, D and E.

8. Demonstrations shall be permitted in Zones B, C, D and E of the Restricted Area only between the hours of 2:00 P. M. and 4:00 P. M. E.D.S.T. on Sundays and at such other times as may hereafter be designated by further order of this Court.

9. This Order shall remain in effect until further order of this Court, but any party hereto or any other person affected by this Order may move at any time on two days' notice for a modification hereof.

10. This Order shall not become effective until the Complainants have filed with the Clerk their approved bond in the penalty of $_________________.

____
Judge

Rockle

MAY 1 8 1966

341 Yale Station
New Haven, Conn.
May 8, 1966

Floyd B. Mc Kissick
213½ West Main
Durham
North Carolina

Dear Mr. Mc Kissick,

I am a second year student at the Yale Law School and I plan to be working in Baltimore this summer. The papers have reported that CORE plans considerable activities in Baltimore this summer. As a member of the Law Students Civil Rights Research Council, I am writing to inquire of the names of the Baltimore lawyers who normally handle CORE matters. I would like to help them, if at all possible. I spent last summer in Detroit working with lawyers for CORE, NSM, the ACLU and the Lawyers Guild, and I would like to continue my work this coming summer.

Thankyou.

Sincerely,

Michael Kelly

Michael Kelly

Baltimore

LAW OFFICES
MARVIN BRAITERMAN

SUITE 506
THE TOWER BUILDING
222 EAST BALTIMORE STREET
BALTIMORE, MARYLAND 21202
SARATOGA 7-1664
AREA CODE 301
727-1664

May 10, 1966

Carl Rachlin, Esquire
Scholarship, Education and Defense Fund
150 Nassau Street
New York, New York 10038

Dear Carl:

On the Horizon House Injunction case, CORE complied with the Injunction on Sunday and instead of picketing Horizon House, they marched to the Court House and protested the Injunction. Yesterday, we filed a Motion to vacate the Injunction as to the CORE people and are scheduled to be heard by Judge Harris on Thursday.

On the conference at N.Y.U., I cannot attend, but I wish that you would send me the conference papers and any other material you might have on hand which might be useful to our civil rights library. Sometime soon, I will send you a list of the members of our Legal Panel and maybe you can let them have some material also.

Best regards.

Sincerely yours,

Marvin Braiterman

Marvin Braiterman

MB:svc

CONGRESS OF RACIAL EQUALITY
CORE
38 Park Row
New York, N.Y. 10038
Floyd McKissick, National Director

Department of Public Relations
Don Smith, Director
267-6270 267-6272

Balti

NEWS RELEASE

FOR IMMEDIATE RELEASE May 13, 1966

CORE DIRECTOR CHALLENGES ILLEGAL COURT INJUNCTION IN BALTIMORE

Following the arrest of five officials of the Congress of Racial Equality (CORE) yesterday for defying a circuit court injunction restricting the picketing of a Baltimore housing development, Floyd B. McKissick, National Director of CORE, charged that the injunction was unconstitutional and illegal.

The Baltimore chapter of CORE and the local citizenry had been picketing the Horizon House at Chase and Calvert Streets for nearly a year in an attempt to break housing barriers when Judge Charles D. Harris, at the request of owner Samuel Gorn, issued the injunction on May 6th restricting the picketing to Sundays between 2 p.m. and 5 p.m. The picket lines were orderly and without incident until robed terrorists from the Klu Klux Klan began counter-picketing last month.

Mr. McKissick stated, "The right to assemble peacefully to petition for redress of grievances is assured every citizen of our United States. Evidently the Negro citizens of Baltimore Maryland are to be denied this right. This severe restriction of Judge Harris' injunction is absolutedly and totally unconstitutional.

(MORE)

We are employing legal remedies in an effort to persuade the court to remove these unjust restrictions. Our Baltimore attorneys are going into federal court to seek a Habeus Corpus and I have issued an immediate call to action by all of our 200 CORE chapters and all citizens across the nation to develop plans for use in Baltimore if the injunction and contempt charges are not rescinded. I urge all citizens throughout the nation and especially the citizens of Baltimore to protest this flagrant denial of their constitutional rights by contacting the Baltimore City government, the Governor of Maryland and President Johnson and to use their good offices to correct these injustices.

The five demonstrators, led by Lincoln O. Lynch, Associate National Director of CORE were arrested by Frank Peltz, Baltimore City Sheriff and four deputies on a complaint filed by Mr. Gorn and signed by Judge Harris. Lynch and field secretary Stu Wechsler both of New York City were hailed into court, charged with contempt and ordered to jail until such time as they shall purge themselves of the contempt charge. James Griffin, Chapter Chairman of Baltimore CORE and two others were released in their own cognizance. A spontaneous vigil of some 60 persons began at 9 p.m. at the Baltimore City Jail.

(MORE)

The protesters vowed to continue the vigil until their constitutional right to petition and picket peacefully is restored. Baltimore has been selected as the target city for CORE's major civil rights activities this year, in response to the urging of numerous local organizations, church groups and community groups.

-30-

FOR FURTHER INFORMATION CONTACT:
Don Smith, Director of Public Relations
Jackie Hayes, Staff Associate

May 16, 1966

Mr. Michael Kelly
341 Yale Station
New Haven, Conn.

Dear Mr. Kelly:

Your recent letter to Mr. McKissick has been given to me for reply. Our prime attorney in Baltimore is Mr. Fred Weisgal and I am sure he will be happy to receive any assistance you may give him. His address is 111 No. Charles Street, his telephone number is 301-727-1730. If anything further you would like please let us know.

Very truly yours,

CARL RACHLIN,
General Counsel

CR: gm

CORE IN ACTION ACROSS THE NATION

TO: ALL CORE CHAPTERS June 1, 1966

FROM: PUBLIC RELATIONS DEPARTMENT NATIONAL OFFICE

BY: JACKIE HAYES NUMBER 004

CORE TRIUMPHANT IN BALTIMORE

Baltimore, Md. - CORE task workers scored two major victories in Baltimore recently when eight building owners met with the local chapter's Housing Committee and signed an open-occupancy agreement, ending a month long battle of picketing, arrests, all-night vigils and direct confrontation with the KU KLUX KLAN. A ninth owner refused to sign the agreement, prompting chapter chairman James Griffin to announce "We will deal with him later." The announcement was mada at a mass rally attended by over 300 persons and the speakers also included Lincoln Lynch, Associate National Director; Cliff Henry, President of the Organization of Civil Rights Federation and Walter Brooks, Target City Project Director. After the rally, Lynch led a group of 17 sit-ins to a downtown segregated bar where they sat for 90 minutes before the owner surrendered and served them. Meanwhile, a picket line and street sit-ins were set up in front of the bar resulting in 7 arrests and much apprehension amongst the other bar owners along the "Block." The fullowing day Lynch and Griffin met with the Bar Owner's Association in the Mayor's office and presented two simple demands: 1. That the bars serve one and all regardless of race, creed or color; and 2. That the city ordinance allowing the bars to segregate be amended. The owners agreed to serve Negroes and CORE members tested the "Block" that night and again found only one dissenter.
"We will deal with him later."
Well done Baltimore CORE!

amaica, N.Y. - The Mississippi sharecroppers who were kicked off their land for seeking help under the OEO anti-poverty programs visited Long Island to raise funds so they can return to their homeland and harvest their timber and crops. Emily Gordon of Ann Arbor, Michigan CORE, accompanying the group, said that federal anti-poverty funds had been

(M O R E)

turned down by Mississippi officials because of a federal requirement that funds be handled by integrated local commissions.

Chicago, Ill. - CORE's John Herbert is spearheading the school integration battle in suburban Phoenix and South Holland. Herbert organized demonstrations at four elementary schools after the school board refused to act on eleven demands presented by a committee of 75 citizen of the community. One of the demands sought curriculum changes to include the role of the Negro American culture.

San Francisco, Calif. - Wilfred T. Ussery, National Chairman, strongly protested the summary dismissal of anti-poverty chief, Kenneth Simmons and charged the political structure with attempting to re-centralize the control to Target Area programming. Mr. Ussery was instrumental in the development of the Citizens United Against Poverty committee that was largely responsible for the innovative concept of "Maximum feasible participation of the poor."

Tallahassee, Fla. - Spiver W. Gordon, CORE's Florida representative is still seeking answers to the Board of Regent's decision to close the Florida A. & M. Law College. After an announcemnnt by the FAMU President that no freshmen would be admitted to the college in the future, Gordon charged that this was a move to "perpetuate segregation and discrimination" by refusing to admit 25 white applicants to the school. Meanwhile, a FAMU grad and former CORE representative in West Florida, John Dorsey Due, Jr. entered the political race as a candidate for the State Senate from the 6th District.

Louisiana - With CORE's backing, Negro candidates made an impressive showing in the recent primary elections in several cities in Louisiana. Richard Haley, CORE southern regional director, stated, "I am very pleased with the election results in general and with the large voter turnout in Louisiana. The voter registration drives that CORE has been conducting are beginning to pay off."

(MORE)

Watts, Los Angeles - When Lou Smith, West Coast Field Secretary, attempted to quiet a raging group of Negroes seeking revenge in the unwarranted slaying by a white policeman of a Negro expectant father rushing his pregnant wife to the hospital, his chest was shattered by the bott of a shotgun by another white policeman and he was left lying in the streets until neighborhood residents came to his aid. Smith reported that the fever pitch is running high as local Negroes await the decision of the inquest to see if another act of police brutality will be whitewashed by civic officials. McKissick has taken a personal interest in the outcome of the inquest and has asked federal and state officials to intervene in the explosive situation.

CORE - Men and Women - Walter Stevens, a Rutgers U. enrollee, was elected chairman of the Newark-Essex chapter. Stevens predicted increased political activity, more community action involvement with special interest in education and a continuing fight for a police review board.

Installment ceremonies were held in St. Louis for State Representative Raymond Howard, who took over as chairman of the St. Louis chapter. And in Morris County, New Jersey, the chapter elected Bonnie Barrow to the chair and asked that all correspondence be sent to Morris County CORE, P.O. Box 303, Madison, New Jersey

Cecil Brown, chapter chairman of Milwaukee CORE was fined $100 after he allegedly shoved a police officer in a discussion over a traffic violation.

###

SEND INFORMATION TO:

Jackie Hayes
CORE
38 Park Row
New York, New York 10038

PRESS RELEASE June 9, 1066

FOR FURTHER INFORMATION CONTACT:

TARGET CITY HEADQUARTERS
832 North Gay Street
Baltimore, Maryland 21205

Baltimore Civil Rights, Church, Civic and Community leaders announced plans today for a march and rally to be held on Sunday, June 12th at 2 PM to protest the shooting of James Meredith and to express renewed determination that injustice and discrimination in Baltimore must end.

Rally spokesmen will protest the continued failure of the Justice Department, particularly the F. B. I. to provide protection for civil rights workers and others in the South who are still being attacked by racist individuals and groups. They will demand that President Johnson use the power at his disposal to protest citizens exercising their constitutional rights. They will also call upon the representatives from Maryland, who have attempted to divide the Civil Rights Bill, now before the House, to cease their efforts and support the bill, including the fair housing section. In addition, speakers at the Sunday rally will point to the unfinished civil rights talk in Baltimore. It is to be expected that they will call for immediate action on the demands of parents whose children attend P.S. #452, and other worn out dilapidated schools. They will call for action to aid the tenants of the Dolfield Apartment. Some of whom have been threatened with evictions because of their fight for better housing. Spokesmen will demand that Judge Harris stop issuing capricious injunctions which only serve to harass citizens exercising their constitutional rights. They will call for people from Baltimore to go into Mississippi and join with others from across the country to complete the march started by Mr. Meredith.

Walter Brooks, CORE Target City Project Director, said: "The shot that ripped into the body of James Meredith hit us all, whenever we see that the Ku Klux Klan is active in Baltimore, it reminds us that what happened to James Meredith could happen here. To prevent that, the City of Baltimore must take action now to eliminate the injustice and discrimination which provides the climates for these groups to prosper. The City must take action to provide and pass open occupancy in Baltimore. The City must take action to provide AND enforce meaningful housing codes, must act for integrated quality schools and to act to insure that all public facilities are open to all"

There can be no peace in Baltimore until there is justice for all people both black and white.

CORE TARGET CITY PROJECT OFFICE

Supreme Bench
of
Baltimore City

CHARLES D. HARRIS
JUDGE

BALTIMORE, MARYLAN

June 10, 1966

CORE Target City Headquarters
832 North Gay Street
Baltimore, Maryland 21205

Dear Sirs:

My attention has been directed to a press release purportedly issued by the CORE Target City Project office, under date of June 9, 1966, and which contains the following statement:

> "Spokesmen will demand that Judge Harris stop issuing capricious injunctions which only serve to harass citizens exercising their constitutional rights."

You are requested to send me forthwith the name of your representative who issued this press release.

Very truly yours,

Charles D. Ha

CDH:C

Charles D. Harris

Rochlin

CONGRESS OF RACIAL EQUALITY
CORE

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

Floyd B. McKissick
national director

OFFICERS
Wilfred Ussery
chairman
Lincoln Lynch
2nd vice-chairman
Ruth Turner
secretary
Bill Bradley
treasurer

STAFF
Carl Rachlin
general counsel
Don Smith
public relations director
Herbert Callender
director of organization
Richard Haley
director of southern region
James T. McCain
voter education-political education dept.
Norman Hall
fundraising director
Clora Coleman
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ADVISORY COMMITTEE
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Hodson R. Reynolds
Jackie Robinson
Arnold M. Rose
Fred M. Shuttlesworth
Lillian Smith
C. K. Steele
Gardner Taylor
Howard Thurman
Bishop W. J. Walls
Goodwin Watson
Joseph Willen
Jerry Wurf
Charles S. Zimmerman

June 13, 1966

Hon. Charles D. Harris, Judge
Supreme Bench of Baltimore City
Baltimore, Maryland 21202

Dear Judge Harris:

On my visit to Baltimore yesterday your letter of June 10, addressed to Target City Headquarters was referred to me by Project Director, Mr. Brooks.

The statement to which you referred was authorized by me for inclusion in the press release. Enclosed please find a copy of the entire statement.

I have the honor to be,

Respectfully yours,

LINCOLN O. LYNCH
Associate National Director

LOL/cs
Enc.

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Balt
Tang City

June 13, 1966

Mr. Marvin Rich
Scholarship, Education And
Defense Fund for Racial Equality
150 Nassau Street
New York, New York 10038

Dear Marvin:

Enclosed is a statement from Fred Weisgal concerning the money spent by him for court records and loaned to him by Marge Rogatz.

I suggest that in light of his letter a check be sent to Marge Rogatz directly.

I also enclose charges for recent trip to Louisiana on school cases. All money was spent in connection with preparation of arguments.

Sincerely yours,

Carl Rachlin
General Counsel

CR?vh

June 16, 1966

Mr. Fred E. Weisgal
Weisgal and Albert
111 North Charles Street
Suite 604-605
Baltimore, Maryland 21201

Dear Mr. Weisgal:

Enclosed is our check for $100 for use as payment of a transcript for contempt proceedings. Please send us the complete bill when you receive it, and we will pay any balance due.

As you must understand, this is an obligation of ours to you.

Sincerely,

Marvin Rich
Executive Director

MR:hm
Enclosure

cc: Marge Rogatz
Carl Rachlin, Esq.

I concur:
Clement F. Haynsworth, Jr.
U.S.C.J.

THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 10,384.

Samuel James Lankford and
Corinthia Julia Lankford, his
wife, Claude Tompkins and Rev.
Elizabeth Tompkins, his wife,
Walter Summers and Regina Summers,
his wife, and Arthur Rayner,

Appellants,

FILED
JUN 23 1966
MAURICE S. DEAN
CLERK

versus

George Gelston,
~~Bernard J. Schmidt,~~ as Commissioner
of Police of Baltimore City,

Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Roszel C. Thomsen, District Judge.

(Argued June 2, 1966. Decided June 23, 1966.)

Before HAYNSWORTH, Chief Judge, and SOBELOFF, BOREMAN, BRYAN and J. SPENCER BELL, Circuit Judges, sitting en banc.

James M. Nabrit, III, and Anthony G. Amsterdam (Jack Greenberg, Melvyn Zarr, Michael Meltsner, Juanita Jackson Mitchell, Tucker R. Dearing and W. A. C. Hughes, Jr., on brief) for Appellants, and Robert C. Murphy, Assistant Attorney General of Maryland, (Thomas B. Finan, Attorney General of Maryland, on brief) for Appellee.

(Bernard J. Schmidt, Police Commissioner when this case was heard below, has retired from office and was succeeded by General George M. Gelston as Interim Police Commissioner. The latter has been substituted as appellee at the instance of the Attorney General of Maryland.)

Sobeloff, Circuit Judge:

Negro families of Baltimore City, four in number but acting in behalf of others similarly situated, as well as in their own behalf, instituted an action in the United States District Court for the District of Maryland, seeking injunctive relief against the Police Commissioner of Baltimore City to prevent further invasions of their right to privacy guaranteed by the Fourth and Fourteenth Amendments to the Constitution. Jurisdiction is grounded on 28 U.S.C.A. § 1343, as authorized by 42 U.S.C.A. § 1983.[1]

The District Court heard the testimony of forty-two witnesses and received a summary of the police records from a team of special masters chosen from the membership of the Junior Bar Association of Baltimore City. This case, which has attained considerable notoriety, stems from the efforts of the Baltimore Police Department to capture Samuel and Earl Veney, two brothers who shot and killed one policeman and seriously wounded another. During a nineteen-day period in December, 1964, and January, 1965, the police conducted searches of more than 300 houses, most of them private dwellings. The searches were based in almost every instance on unverified anonymous tips. In none did the police have a search warrant. Although the court found that the police, in conducting these searches at all hours of the day and night, upon telephone tips from unknown persons, had deprived plaintiffs and others of their constitutional rights, it refused to issue an injunction and denied plaintiffs relief. The court, however, retained jurisdiction of the case in order to process expeditiously any future claim of invasion of the plaintiffs' rights. 240 F. Supp. 550 (D.Md. 1965).

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[1] Baltimore City is a municipal corporation of the State of Maryland, but its Police Commissioner is an appointee of the Governor. Chap. 742, Acts of General Assembly, 1957, amending sec. 526 of the Charter and Public Local Laws of Baltimore City (1949 ed.). Both at trial and on appeal the Police Commissioner was represented by the Attorney General of Maryland. Art. 32A, § 2, Ann. Code of Md. (1957).

There is no dispute over the facts. On the evening of December 24, 1964, several persons committed an armed robbery of a liquor store in Baltimore City, in the course of which Police Lieutenant James Maskell was shot and seriously wounded. A suspect was soon apprehended near the scene of the crime and after questioning him, several police officers visited homes in the area in search of other suspects. At about 4:50 a.m., on December 25, Police Sergeant Jack Cooper, a uniformed officer in a cruising car and a member of the search party, was found fatally shot near his cruiser.

Early in the morning of December 25, warrants were issued for the arrest of Samuel Veney and his brother Earl, charging them with the robbery of the liquor store and with assaulting and shooting Lieutenant Maskell.[2] The Veney brothers were justifiably believed by the police to be armed and extremely dangerous. Later that day, the then Police Commissioner, Bernard Schmidt authorized a special squad to be formed under the command of Captain Joseph Mahrer to search for the Veneys. About 50 or 60 police officers were members of the squad at one time or another.

Between December 25 and January 12, the Baltimore police made more than 300 "turn-ups" in an unsuccessful effort to locate and arrest the Veneys. In police parlance a turn-up is an investigation of a location and usually includes a search of the premises. Most of the searches here were of private residences. The Veneys are Negroes, and most of the dwellings searched were occupied by Negroes.[3]

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[2] The police believed that the Veneys had also killed Sergeant Cooper.

[3] The special masters' summary of the police records listed 300 searches by dates:

Date	Searches	Date	Searches
12/24	0	1/3	7
12/25	4	1/4	18
12/26	39	1/5	5
12/27	16	1/6	10
12/28	16	1/7	4
12/29	28	1/8	7
12/30	35	1/9	4
12/31	54	1/10	2
1/1	26	1/11	1
1/2	23	1/12	1

The court found that:

> "The police records with respect to many of the searches are sketchy and incomplete. Frequently all that is shown is that a particular address was turned-up on a particular day.
>
> "The police did not apply for or obtain search warrants for the search of any of the more than 300 premises they entered." 240 F. Supp. at 553-54.

A police emergency vehicle carrying shotguns, submachine guns, tear gas apparatus, and bulletproof vests accompanied the men on every search. Before each turn-up a surveillance team of plainclothesmen would drive past the building to locate exits, alleyways, etc., but there were no inquiries in the neighborhoods about the houses to be searched nor was there any other investigation of the tips, except to observe the character of the neighborhood.

Four officers carrying shotguns or submachine guns and wearing bulletproof vests would go to the front door and knock. They would be accompanied or followed by supervising officers, a sergeant or lieutenant. Other men would surround the house, training their weapons on windows and doors. "As soon as an occupant opened the door, the first man would enter the house to look for any immediate danger, and the supervising officer would then talk to the person who had answered th door. Few stated any objection to the entry; some were quite willing to have the premises searched for the Veneys, while others acquiesced because of the show of force." 240 F. Supp. at 554.

> "The officers involved worked exceptionally long hours. Some were polite and considerate of the occupants. Others were abrupt, and without explanation of their purpose, flashed lights on beds where children were sleeping and otherwise upset the occupants of the home being searched." 240 F. Supp. at 554.

Few specific instances need be detailed to illustrate the consequences of police reliance on anonymous tips and the terrifying experiences to which occupants of the searched homes were subjected.

Samuel Lankford and his wife, who have six children, have resided at 2707 Parkwood Avenue since 1949. Mr. Lankford has worked at the U.S. Post Office in Baltimore for over ten years. At about 1:15 a.m. on January 2, 1965, Lieutenant Robert Hewes was told by a communications center officer that he had received a call that the Veney brothers were at this address with a family named Garrett. A few minutes before 2:00 a.m. Lieutenant Hewes and his search party converged upon Parkwood Avenue. Upon their arrival in the neighborhood they met on the street a Negro man, described by the lieutenant as "respectable looking," who identified himself as the person that had called the communications center. He told Lieutenant Hewes that he had been told by a newspaper boy that two men resembling the Veneys had entered a house on Parkwood Avenue. At 2:00 a.m. a search party led by the lieutenant knocked on the door, and Mrs. Lankford, awakened by the knock, opened the door. The officers entered the house and began their search while the lieutenant talked with the woman. She told him that her name was not Garrett. At the trial she denied that the officers asked for or were given permission to search, and Lieutenant Hewes acknowledged that his men had already gone to the second floor while he was talking with her. The husband was awakened in his second floor bedroom by two flashlights shining in his face and found four men with shotguns in his room. They questioned him, while other officers searched the remaining rooms including the children's bedrooms, and left.

Mr. and Mrs. Wallace have made their home at 2408 Huron Street for 21 years. They live with a three-year old son, three daughters, Lucinda (a Baltimore public school teacher), Harrietta (a college student), and Sharon (a high school student), and two other relatives. At 8:30 p.m. on December 30, 1964, Lieutenant Coll of the Southwest district was told by a clerk at another police station that she had received an anonymous call from a man who said that the Veneys were being sheltered at this address. Lieutenant Coll testified that since this was the first time that the Veneys had been placed in this neighborhood, he felt that an investigation was in order. A little after 9:00 p.m. Lieutenant Coll led about 14 officers to the house. When the police arrived, Lucinda

Wallace was showing slides to a group of her family and guests. Mr. and Mrs. Wallace were both out, Mrs. Wallace at a beauty shop she operated four doors away. Six officers armed with shotguns and rifles entered and searched the home; others who were stationed outside would not allow Mrs. Wallace to enter and refused to explain what was happening. Reduced to tears, she was finally admitted to her home, where she was joined by her children, all crying hysterically. As the policemen were departing, they told Lucinda and her mother that they had received an anonymous call that the Veneys were in the house.

At the trial several police officers, each with long experience on the Baltimore police force, testified that in serious cases it was routine practice to make searches of homes on the basis of anonymous calls. They recognized the difficulty in authenticating such tips, and testified that they attempted to do so by evaluating the tone of voice used by the caller. The officers further stated that not infrequently they would also conduct searches based on tips received from the outside and transmitted to them by police telephone clerks.

On January 8, 1966, plaintiffs' attorneys brought the complaint to the chambers of the District Judge and asked for a temporary restraining order. At a hearing held that afternoon, the Deputy Attorney General represented to the court that the Police Commissioner would promptly issue a general order dealing with the problems raised in the complaint. Based on that representation, the District Court denied the request for a temporary restraining order, and set the case for trial on January 14.

On January 11 the Police Commissioner did issue General Order No. 10388.[4] In essence the Order forbids

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[4] "General Order: January 11, 1965.
No. 10388
"Subject: Service of Arrest Warrants

"The question has recently arisen as to the precise scope of the authority conferred upon police officers by arrest warrants, and specifically whether such warrants authorize entry upon private property for the purpose of locating and arresting the defendant named in the warrant.

"A police officer may make a peaceable or a forcible entry to search any premises for the purpose of arresting a person for whom an arrest warrant has been issued, if, but only if, the officer has probable cause to believe the accused person to be on the premises to be searched.

"In this context, 'probable cause' is said to exist where the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that the accused person is on the premises to be searched.

"The officer should, where practicable, seek admission to the suspected premises by announcing his identity, the existence of the arrest warrant, and his desire to search for and arrest the accused person. If the officer has any doubt as to the existence of 'probable cause', he should immediately either seek the issuance of a search warrant, or consult with the office of the State's Attorney for Baltimore City or of the Attorney General of the State of Maryland before attempting entry upon private premises in search of the accused person.

(Cont'd on p.10)

police officers from searching "any premises for the purpose of arresting a person for whom an arrest warrant has been issued" unless "the officer has probable cause to believe the accused person to be on the premises to be searched." The determination of what constitutes probable cause is still left to the policeman, and there is nothing in the Order which specifically prohibits officers from conducting searches grounded only on anonymous tips, which is precisely the evil to which the Complaint was addressed. We therefore find nothing in General Order No. 10388 which would make the issuance of an injunction unnecessary.

In refusing injunctive relief, the District Court emphasized the reluctance of the federal judiciary to employ its equity power to control police practices[5] and

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4. (Cont'd from p.9)

"In all instances, consideration should be given to the convenience of the persons whose premises are to be searched and the other residents of the neighborhood. In this connection, it may at times be necessary, and in the public interest, to make such searches in the nighttime when most of the residents would not be on the street, when the possibility of warning and escape would be less, and when greater safety would be afforded the arresting officer.

"Copies: Inspectors, All Districts, Divisions, Units."

[5] But see, for example, cases where courts have enjoined the police from enforcing segregation. Due v. Tallahassee Theatres, Inc., 333 F.2d 630 (5th Cir. 1963); Anderson v. City of Albany, Georgia, 321 F.2d 649 (5th Cir. 1963); Williams v. Wallace, 240 F. Supp. 100 (M.D.Ala. 1965).

noted that

> "this Court has now stated the basic principles which must be observed by the police in determining whether there are reasonable grounds for a contemplated entry. The Court is satisfied that the Police Commissioner and other police officers will make a bona fide effort to observe those rules. They did observe them during the remainder of the search for the Veneys after the Commissioner issued General Order No. 10388 on January 11." 240 F. Supp. at 561.

We conclude, however, that in striking the balance between the role of the federal court in the preservation of the constitutional rights of the appellants and the independence of state officials, the District Court erred when it refused to issue an injunction prohibiting the police from conducting searches based only on uncorroborated anonymous tips and hence without probable cause.

But 5000 homes in Alameda county

This case reveals a series of the most flagrant invasions of privacy ever to come under the scrutiny of a federal court. The undisputed testimony indicates that the police in conducting the wholesale Veney raids were engaging in a practice which on a smaller scale has routinely attended efforts to apprehend persons accused of serious crime. If denying relief in these circumstances should be held a proper exercise of judicial restraint, it would be difficult to envision any case justifying judicial intervention. The parties seeking redress have committed no acts warranting violation of the privacy of their homes; there has never been any suspicion concerning them or their associations. It was not contended by the Attorney General, nor could it have been contended, that information from an anonymous and unverifiable source is probable cause for the search of a home.

Instances have often come to the attention of courts in which persons accused of crime have sought to prevent the use against them of illegally seized incriminating evidence. But it is only in the rare instance that a person not accused or even suspected of any crime petitions the court for redress of police invasion of his home. The reason is not that such invasions do not occur but, as Mr. Justice Jackson eloquently put it:

> "Only occasional and more flagrant abuses come to the attention of the courts, and then only those where the search and seizure yields incriminating evidence and the defendant is at least sufficiently compromised to be indicted. If the officers raid a home, an office, or stop and search an automobile but find nothing incriminating, this invasion of the personal liberty of the innocent too often finds no practical redress. There may be, and I am convinced that there are, many unlawful searches of homes and automobiles of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing, and about which we never hear.
>
> "* * * There is no opportunity for injunction or appeal to disinterested intervention. The citizen's choice is quietly to submit to whatever the officers undertake or to resist at risk of arrest or immediate violence." Brinegar v. United States, 338 U.S. 160, 181-182 (1949) (Mr. Justice Jackson dissenting).

There can be little doubt that actions for money damages would not suffice to repair the injury suffered by the victims of the police searches. Neither the personal assets of policemen nor the nominal bonds they furnish afford genuine hope of redress. Nor is there any provision for compensation from public funds. In any event the wrongs inflicted are not readily measurable in terms of dollars and cents. Indeed, the Supreme Court itself has already declared that the prospect of pecuniary redress for the harm suffered is "worthless and futile." Moreover, the lesson of experience is that the remote possibility of money damages serves as no deterrent to future police invasions. Mapp v. Ohio, 367 U.S. 643, 651-2 (1961), and concurring opinion of Mr. Justice Douglas at 666, 670; Irvine v. California, 347 U.S. 128, 137 (1954); Wolf v. Colorado, 338 U.S. 25, 41, 42-44 (1949)(Mr. Justice Murphy dissenting).

The appellants' position has been lucidly articulated by their attorneys:

> "Unless equity courts find means to protect the innocent homeowners, who are the principal beneficiaries of the Fourth Amendment, their rights will not be protected. It would be a grotesque irony if our courts protect only against the unlawful search which actually uncovers contraband (by the exclusionary rule), while offering no relief against an admittedly unlawful pattern and practice affecting hundreds of innocent homeowners." Brief of Appellants, p.38.

We are persuaded that the injunction should issue even though the Veney raids have ceased and notwithstanding the Police Commissioner's General Order No. 10388. These raids were not isolated instances undertaken by individual police officers. They were rather the effectuation of a plan conceived by high ranking officials. All members of the Police Department, from the Commissioner down to the raw recruit, are expected to be familiar with the principle that if the police intend to conduct a search of a man's home for a suspect, they must at least have probable cause to believe that he is on the premises. The doctrine is not subtle; it touches the very heart of law enforcement practices, and has found expression in numerous judicial opinions.[6] Its force could not have escaped the Commissioner and other members of the police hierarchy, yet the raids were carried on relentlessly for 19 days. The grave character of the department's conduct places a strong obligation on the court to make sure that similar conduct will not recur. Police protestations of repentance and reform timed to anticipate or to blunt the force of a lawsuit offer insufficient assurance that similar raids will not ensue when another aggravated crime occurs. See United States v. W. T. Grant Co., 345 U.S. 629, 633 (1953); Bailey v. Patterson, 323 F.2d 201, 205-06 (5th Cir. 1963); Anderson v. City of Albany, Georgia, 321 F.2d 649, 656-57 (5th Cir. 1963); "Developments in the Law--Injunctions," 78 Harv. L. Rev. 994, 1076 (1965). In fact, it is perhaps more reasonable to view the cessation of the raids and the promulgation of General Order No. 10,388 not as belated acts of repentance but as the recognition of the futility of continuing the searches when it had become manifest that the Veneys had made their escape. They were later apprehended in New York State.

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[6] See Costello v. United States, 298 F.2d 99 (9th Cir. 1962); Wrightson v. United States, 222 F.2d 556 (D.C. Cir. 1955); Contee v. United States, 215 F.2d 324, 327 (D.C. Cir. 1954); United States v. Ruffner, 51 F.2d 579 (D.Md. 1931). See also Aguilar v. Texas, 378 U.S. 108 (1964); Giordenello v. United States, 357 U.S. 480 (1958); Draper v. United States, 358 U.S. 307 (1959). Even a cursory reading of the Fourth Amendment will not fail to convey the idea that an essential requirement before police may enter a private home is the existence of probable cause:

> "The right of the people to be secure in their persons, houses, papers, and effects, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The General Order, in reciting no more than that probable cause is required to conduct a search, is in no sense a recognition that the conduct complained of fell short of established legal standards; it adds nothing to the general rule with which the rank-and-file policeman should already have been familiar. It is too vague to provide even a faint warning that searches based only on anonymous tips do not constitute proper police tactics. It would not have been too much to expect in these circumstances a forthright statement that officers conducting such illegal searches in the future will subject themselves to disciplinary action.

The plaintiffs, in their argument in the District Court, maintained that the police behavior was racially discriminatory since most of the homes searched were occupied by Negroes. This contention the District Court rejected, reasoning that the police concentrated on Negro residences because the Veneys are Negroes and most of the information received related to their supposed presence in Negro neighborhoods. While this ruling of the District Court is not contested on appeal, we think that it has a substantial bearing on the question of whether injunctive relief is appropriate. The District Judge himself noted that "[t]he evidence does show what has become common knowledge in Baltimore--that the relations between the Negro community and the police have deteriorated seriously." 240 F. Supp. at 556 n.4.

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Baltimore City has escaped thus far the agony and brutality of the riots experienced in New York City, Los Angeles, Chicago, and other urban centers. Courts cannot shut their eyes to events that have been widely publicized throughout the nation and the world. Lack of respect for the police is conceded to be one of the factors generating violent outbursts in Negro communities. The invasions so graphically depicted in this case "could" happen in prosperous suburban neighborhoods, but the innocent victims know only that wholesale raids do not happen elsewhere and did happen to them. Understandably

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they feel that such illegal treatment is reserved for those elements who the police believe cannot or will not challenge them. It is of the highest importance to community morale that the courts shall give firm and effective reassurance, especially to those who feel that they have been harrassed by reason of their color or their poverty.

After so vast a demonstration of disregard of private rights, the complainants are entitled to a clear response. While the immediate pressure of wholesale raids has been withdrawn, the practice of indiscriminate searches of homes has been renounced only obliquely, if at all, and the danger of repetition has not been removed. The sense of impending crisis in police-community relations persists, and nothing would so directly ameliorate it as a judicial decree forbidding the practices complained of.[7]

In ordering the issuance of an injunction, we have not blotted from our consideration the serious problems faced by the law enforcement officer in his daily work. His training stresses the techniques of the prevention of crime and the apprehension of criminals, and what seems to him to be the logical and practical means to solve a crime or to arrest a suspect may turn out to be a deprivation of another's constitutional rights. And where one policeman is killed and another wounded, the police, and the public too, are understandably outraged and impatient with any obstacle in the search for the murderer. While fully appreciating the exceedingly difficult task of the policeman, a court must not be deterred from protecting rights secured to all by the Constitution.

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[7] In the debate over the tentative draft of the American Law Institute's Model Code of Pre-Arraignment Procedure, Judge George C. Edwards, now a member of the United States Court of Appeals for the Sixth Circuit and formerly Commissioner of Police in Detroit, made the same point, that police excesses bear the seed of untoward counter reactions of violence.

The police department is society's instrumentality to maintain law and order, and to be fully effective it must have public confidence and cooperation. Confidence can exist only if it is generally recognized that the department uses its enforcement procedures with integrity and zeal, according to law and without resort to oppressive measures. Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds disrespect for the law, the difficulties of law enforcement are multiplied.[8]

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[8] The classic words of Mr. Justice Brandeis, dissenting in Olmstead v. United States, 277 U.S. 438, 485 (1928), apply with full force in the present context:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent

(cont'd on p. 19)

Baltimore now has a new Interim Police Commissioner whose enlightened efforts to foster better relations between the Negro community and the Police Department have been widely applauded by all elements of the community. The clear assurance which the injunction is designed to give is nevertheless still necessary in the interest of public tranquility. The issuance of the injunction will not prove harmful, but helpful, to the Interim Commissioner temporarily in office and to his successors in the lawful and effective exercise of their authority and in the administration of the department.[9]

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8. (cont'd from p. 18)

teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means--to declare that the Government may commit crimes in order to secure the conviction of a private criminal--would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

9. Though not stressed, the fact was mentioned in oral argument that since the preparation of the briefs the xxxxxx defendant* has retired from office and has been succeeded by General George M. Gelston, as Interim Police Commissioner, whose successor is to be appointed in the near future. This presents no difficulty. Our concern is not with the person who happens to hold the office at a particular time, but with the office. The named defendant is only a nominal party, and the real aim of the proceeding is not to reach the Commissioner individually but to forbid an evil practice that has long and notoriously persisted in the Police Department. The ancient common law rule of abatement as a result of death or resignation of a public officer was relaxed and generally abandoned even before the 1961 amendment to Rule 25(d) of the Federal Rules of Civil Procedure. Seven Oaks, Inc. v. Federal Housing Administration, 171 F.2d 947, 950 (4th Cir. 1948). The Rule now provides:

(cont'd on p. 20)

named in the District Court proceeding

The appellants, however, would have us go further. They urge this court to order an injunction much broader in scope than one limited to prohibiting searches based only on anonymous tips and without probable cause. They contend that the determination of the existence of probable cause should not be left to policemen but should be vested in a judicial officer, and that absent exceptional circumstances the police should be required to obtain a search warrant from a magistrate before entering the private home of a stranger in search of an offender, even when the police have in their possession a warrant for the arrest of the person they are seeking. Appellants

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9. (cont'd from p. 19)

"(d) Public Officers; Death or Separation from Office.

"(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

"(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added."

The injunctive order may be issued against "The Police Commissioner of Baltimore City," or the name of the present incumbent may, on application and in the discretion of the District Court, be substituted. In either case the order will be binding in the future regardless of the identity of the officeholder. See generally 2 Barron & Holtzoff, Federal Practice and Procedure (Wright ed. 1961), §§ 625 and 626.

point out that the existence of an arrest warrant establishes only that there is probable cause for the arrest of the person named therein, but that it reflects no judgment at all as to where the suspect may be found.

It is settled law, of course, that subject to established exceptions, a search warrant is constitutionally required to enable the police to conduct a search for "things." Agnello v. United States, 269 U.S. 20 (1925). Appellants' contention is that there is no reason to think that police are better judges of probable cause when their quarry is a person rather than a thing. Moreover, appellants' counsel forcefully argue that from the standpoint of the victim the invasion of the privacy of his home is unaffected by the object of the policeman's search. The gravity of the invasion is precisely the same whether the policeman's objective is to search for a person or for an inanimate object, and the resulting injury is not mitigated by the fact that the officer may have a warrant to arrest some person but has not bothered to obtain a warrant from a judicial officer to search specified premises--not the premises of the person named in the arrest warrant. The contention is that the determination of probable cause for searching a particular home for a suspect who does not live there is the function of the magistrate, not the policeman.

Appellants frankly concede that no case explicitly upholds their contention, but they refer us to a few cases which may be construed as supporting their reasoning. See Morrison v. United States, 262 F.2d 449 (D.C. Cir. 1958); District of

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Columbia v. Little, 178 F.2d 13, 17 (D.C. Cir. 1949), aff'd, 339 U.S. 1 (1950). They criticize as inadequately and incorrectly reasoned the contrary statements in Love v. United States, 170 F.2d 32 (4th Cir. 1948), cert. denied, 336 U.S. 912 (1949).

We have no occasion now to accept or reject the legal theory thus advanced by the appellants or to canvass countervailing arguments. The injunction which we order fully protects them and all similarly circumstanced from future violations of the character described in this record, and we find it unnecessary to consider the advisability of a broader decree.

The case will be remanded for the entry of a decree enjoining the Police Department from conducting a search of any private house to effect the arrest of any person not known to reside therein, whether with or without an arrest warrant, where the belief that the person is on the premises is based only on an anonymous tip and hence without probable cause.

Reversed and Remanded.

Welfare
1966

BALTIMORE WELFARE RECIPIENT PROTECTIVE COMMITTEE
805 McAleer Court
Baltimore, Maryland 21205

July 7, 1966

Miss Esther Lazarus
Department of Public Welfare
1500 Greenmount Street
Baltimore, Maryland 21205

Dear Miss. Lazarus:

We of the Baltimoe Welfare Recipient Protective Committee are seeking to obtain information which will help us in our efforts, to help welfare recipients be informed and understand of theirrights, what benefits are available ot them and how eligibility for there benefit is determined.

We are reguesting that you make available to us one of your official Department of Welfare Manual, th complete basis for determining allowances, and any other written information setting forth the policies and regulations that bear directly on the granting of assistance.

We would appreciate receiving this information as soon as possible. We are willing to pay the cost of postage and the cost of any of the material including the manual.
Thank you for your cooperation,

Respectfully your,

Dorothy Hutchinson

C.C. sent to the following person:
Mayor McKeldin
Mr. Carl Rachlin
Mr. George Wiley
Mr. Fred Weisgal
CORE Target City

THE REVEREND RICHARD G. BELCHER
President

THE REVEREND DR. WAYNE ARTIS
Executive Director

The Rhode Island State Council of Churches

2 STIMSON AVENUE, PROVIDENCE, RHODE ISLAND 02906
TELEPHONE 521-6658 AREA CODE 401

JUL 11 1966

July 8, 1966

Mr. Carl Racklin
38 Park Row
New York, New York

Dear Carl:

I was talking to you in Baltimore in regard to the de facto segregation school problem that exists in Providence, Rhode Island.

Right now we are concerned with the possible cutting off of Federal, state, and local funds that are going into our segregated school system.

The Negro population constitutes about 8 per cent of the population in the City of Providence. In the public school system, we comprise 17.8 per cent of all students in the City of Providence. We have an excess of six schools in our Providence school system that comprise over 50 per cent; two have as many as 93 per cent.

We are gearing our attack on the elementary school level, and we feel that you might be able to assist us in this: (1) in the cutting off of Federal funds, and (2) with the possible plans in eliminating this problem.

We have suggested to the School Board that we give them an August 1 deadline to come up with some positive program to end this evil.

We would appreciate as much help as possible on this matter. Thank you.

Sincerely yours,

Clifford R. Montiero

CRM/df

Clifford R. Montiero
Community Contact Officer

TOMMY TUCKER STORES, INC. NO. 1
a Maryland corporation

Complainant

vs.

MARYLAND FREEDOM UNION,
a voluntary unincorporated
association

SERVE ON: MICHAEL FLUG
322 N. Schroeder Street
Baltimore, Maryland 21223

and

MICHAEL FLUG
322 N. Schroeder Street
Baltimore, Maryland 21223

and

OLA JOHNSON
322 N. Schroeder Street
Baltimore, Maryland 21223

Respondents

IN THE

CIRCUIT COURT

OF

BALTIMORE CITY

: : : : : : : : : : : : : : : :

ORDER

Upon the aforegoing Bill of Complaint and Affidavit, it is this 8th day of July, 1966, by the Circuit Court of Baltimore City,

ORDERED, ADJUDGED and DECREED that the Respondents and each of them be and the same are hereby temporarily enjoined for a period of ten days from picketing, placarding or leafletting on or about the Complainant's premises or in any other manner interfering with the operation of Complainant's business or Complainant's relations with its customers and suppliers with the right however in the Respondents within five days to move to vacate this Order for good cause shown or to move for a hearing in accordance with Maryland Rule BB72.

Joseph R Byrnes
JUDGE

TRUE COPY
TEST

Henry J. Ripperger

Balt

July 12, 1966

Mr. Sidney Albert

Room 1110

1 Charles Center

Baltimore, Maryland

Dear Sidney:

I am sorry that I didn't send the name of a Norfolk lawyer or the enclosed list and booklet down to you by way of Jack Brian. Without further ado, therefore, let me give you the name of the only Norfolk person (Newport News lawyer) that I have been able to find: George H. Weller, Esq. 5512 Brookville Road, Norfolk, Virginia. Telephone number (office) 703 393-6081 ext 361; Home-703 8555. I should note that Weller is a Coast Guard Officer on active duty and what he is able to do is limited by his status as such. In the event that he is not a satisfactory person to handle the problem with which you are concerned I am also sending the names and addresses of two lawyers in Alexandria, Virginia; Allison Brown, Esq. 300 Beechwood Road (no telephone on my record) and Philip J. Hirschkop, Esq. c/o Lanof, Cohen and Cohen, 1513 King Street, Alexandria, Virginia 22314, telephone-KI 8-7777 or KI 9-2330.

The List of Baltimore lawyers encloses, is, as you will readily realize incomplete. For one thing, it does not include the name of most of the people on the Civil Liberties panel. You will also note that several of the names are not followed by addresses or telephone numbers. I hope that you are able to find them through the Baltimore Telephone Directory or elsewhere and pass them on to me. I will be writing to all of them this week, particularly those with whom I have not already spoken..

I hear that things were dreadfully dull in Baltimore on Tuesday. I amssure that there was certainly not enough to do to keep Jack busy. It is hoped that CORE, U-JOIN and MFU will "do better" in the near future. I look forward to seeing you again soon. Until then, please give my best to Morris, Evie, Dave and your family.

which cause confusion. For Example, we want to help you as much as humanly possible but because you spend so much time doing things that you think have to be done, you are not able to keep in touch with us until you suddenly remember a crisis is at hand. If you could advise us earlier of the problem, we could do more things for you. We are anxious to do more for you but you've got to help us in that regard by giving us the information on the nature of the problem sooner. In any event keep in close touch and hope to see you soon.

With best regards,

Yours truly,

Carl Rachlin
General Counsel

CR/vh

UNIVERSITY OF MARYLAND

SCHOOL OF SOCIAL WORK

721 W. REDWOOD STREET
BALTIMORE, MARYLAND 21201
AREA CODE 301, 955-7790

July 18, 1966

Mr. Carl Rachlin, Legal Director
CORE Scholarship, Education and
Defense Fund, Inc.
150 Nassau Street
New York, New York

Dear Mr. Rachlin:

You may recall our conversation in Baltimore, Md., on the evening of Wednesday, July 13, 1966--following a meeting at which Ed. Sparer spoke--about the possibility of associating some of our Community Organization student trainees with the program in East Baltimore.

Neighborhood Social Work is the speciality on which our Community Organization sequence is built, therefore, the program supported by your agency in East Baltimore would seem to be an appropriate and desired learning setting for a future social worker. I have discussed my initial impression of last Wednesday's meeting and the subsequent proposition put to you with my colleague, and he, too, agrees that we ought to follow through.

We will both be available through the remainder of July. Am I correct in recalling that you will be in Baltimore before the end of the month? If so, I will be happy to meet with you at your convenience. Perhaps there is a local person with whom we can then continue planning with, and who can serve as a responsible agent for primary contact with our students.

Thanks again for your receptiveness to this proposal. It was a pleasure meeting you. With best wishes, I remain

Cordially yours,

Roy Borom

Roy Borom
Assistant Professor

RB/ttc

Bell

July 26, 1966

Professor Roy Borem
University of Maryland
School of Social Work
721 West Redwood Street
Baltimore, Maryland 21201

Dear Professor Borem:

Thank you for your kind letter of the 18th. Transportation difficulties being what they are,,it is hard for me to say exactly when I will return to Baltimore. I hope to be there no later than August 1, 1966. I wonder if you would be available on that date. At this moment, I do not see how I could return this week and hope that it will suit your convenience if we could meet next Monday and/or Tuesday.

Sincerely yours,

Carl Rachlin
General Counsel

CR/vh

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July 26, 1966

Frank Kaufman, Esq.
First National Bank Building
Baltimore, Maryland 21202

Dear Frank;

Thank you for your kind letter of the 18th. I am more than anxious to return to Baltimore and spend an evening with you and your family.

I am glad of this opportunity to briefly tell you about the conversation I had with Leon Sachs when I was last in Baltimore. The first part of our conversation was merely a repetition of what you and I discussed: that it is terribly imprtant that a committee of slum landlords together with other interested landlords be brought together and the situation reviewed. Thereafter, there ought to be formed some committewithpersons living in the ghetto who would set up a joint committee with the landlords. This would have several effects. First of all, it would develop a joint sense of responsibility for the problems that exist in ghetto sections. We should not spend any serious amount of time in deciding who did what to the piece of property-whether the landlord let the property run down or whether the tenanttacted in such a way to cause it to deteriorate. This will be an endless debate which will serve nobody any good and merely exacerbate present difficulties. It is important however, that a plan of action be undertaken, namely that a joint committee starts inspecting property and deciding upon what ought to be done and then both takingjjoint responsibility for getting it done. This means that the landlord will make necessary repairs and the tenants committee will take responsibility once the property is put in decent conditiont that it be kept that away. This can only be done if the tenants themselves feel that they are participating in the matters that happen around them and not merely that people are going things for or against them.

Obviously, more than this will be needed. The help of people who are knowledgeable in the field of urban development and renewal such as Baltimore neighborhoods is extremely important and it is my view we should involve them. Futhermore, it is important that we involve poeple who have knowledge of financing. There are ways that this can be financed both through federal and private funds. The new federal department of housing under the secretaryship of Robert Weaver has funds available for making bviously, more than this will be needed. The help of people who are knowledgeable in the field of urban development and renewal such as Baltimore neighborhoods is extremely important and it is my view that we should involve them. Furthermore, it is important that we involve people who have knowledge of financing. There are ways that this can be financed both through federad and private funds. The new federal Department of Housing and Development under the secretaryship of Robert Weaver has funds available for making repairs to property and this should be explored. In addition, the availability of private funds has to be determined through the bank. Private funds can only be available if there is some reasonable assurance that the loan will be repaid. My thought is that we should explore the possibility of loans made to repair people who would receive mechanics' liens for the work they do to the property. The loans could be made to the repairman by the bank who would at some time receive some kind of assignment of the mechanics' lien that would be filed by the repairmen or would have an equitable right to the proceeds received for repayment of repair to the property. I am insufficiently' knowledgeable on the legal relationships that are required here and, of course, we would need the assistance of a lawyer group who could develop the techniques of protecting financial institutions who lend money for this purpose.

It is only the joint cooperation of all involved that can produce any beneficial and lasting effect to the various community groups interested but unless we could do something rapidly terrible troubles can break out. Since we have last talked, we have all read about Cleveland and Brooklyn. I am no social psychologist but nevertheless it is clear that unless we do something and unless, more importantly, the people in the community feel their participation in the effort, this could happen anywhere including Baltimore.

Leon Sachs was very enthusiastic about the possibility of a program of this kind and indicated that he would speak to Mr. Blaustein.a As busy as you are, perhaps you could check up on Leon and find out how he is making out. This is a very difficult program to undertake but I honsestly believe that it can be done if we put together the various skills: financial, legal, urban renewal as well as the interested parties in a joint program.

My second meeting on the day I was last in Baltimore involved two parts: One part was meeting with interested lawyers who are willing to volunteer time to assist in Welfare clients achieving their entitlement under the Federal and State Statutes and the second part was meeting with a fairly substantial number of welfare mothers in an organized fashion and to begin working with them to develop a program. This too will be somewhat complicated, but I suspect a little simpler than the real estate matter. I hope perhaps eventually to be able to hire a young full-time lawyer who will work in this area. My problem which I mentioned to you somewhat c casually is that this lawyer will inevitably have to find volunteers behind him who will handle the spill-over of nonwelfare legal problems that will be presented to him for a variety of reasons. I hope that the Bar Association program will be of some use in this regard and I hope to have other volunteers available in Baltimore to handle them. In some cases, there may even be honorable fees to be earned by lawyers where they are
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going to have to sue someone like a retailer for fraudulent sales.

In any event, Frank, I hope to see you quite soon and will let you know when next I come to Baltimore. The strike has slowed down my travel a good deal since it is much more difficult tojmake a one day trip. I may be in Baltimore next Monday and/or Tuesday and should I come I will let you know in advance. The Maryland Freedom Union has asked me to participate directly in the negotiation with Tommy Tucker. Unfortunately, they have read of some of the work I have done in labor relations prior to my deep involvement in civil rights and they are expecting me to put it to some use. Best regards to Clem and your wondeful children.

Sincerely yours,

Carl Rachlin
General Counsel

CR:vh

August 15, 1966

Mr. Leon Sachs
Director, Baltimore Jewish Council
Maryland National Bank Building
Baltimore and Light Street
Baltimore, Maryland

Dear Leon:

I am very curious to know how your meetings with the real estate people are progressing. Since our last conversation I have been doing some investigating as to various types of assistance that might be available in furtherance of our mutual interests in this project.

For example, based upon some work that the Unites State Gypsum is doing in some cities in the area of work rehabilitation in an event to develop further uses of its product, I think we might be able to persuade them to work with us in Baltimore and I will be willing to undertake this just as soon as we are ready for that part of the operation. I think very soon we ought to have some conversations with contractors and sub-contractors for the purpose of getting some idea of costs. For example, just to for our own thinking, it is estimated complete rehabilitation of an apartment unit in a slum dwelling would be on an average of $9,000.00 per apartment. I am not suggesting that this is what we are aiming for although it would be nice if we could do it. But this at least would give us some idea of the costs factors involved. It would cost approximately $25,000.00 including land acquisition, to build such a unit in public and other institutions.

The 1965 Housing and Urban Development Act has two factors which are of some use to us: (1) Owners can borrow as much as $10,000.00 at 3% over relatively long periods of time such as twenty years. (2) Owners of slum housing with an annual income of less than $3,000.00 a year can receive an outright grant of $1,500.00 for repairs within the dwelling unit. These are some factors that are working for us and ought to be put to use as quickly as possible. I trust, Leon, that we can get moving on this rapidly and please stress to the landlords that this repair and rehabilitation work must come as a result of the joint efforts of the tenants as well as the landlords if it is to have any meaningful result to the entire community.

I look forward to hearing from you very soon.

Cordially,

Carl Rachlin
General Counsel

CR/tp

Balt

August 15, 1966

Fred Weisgal, Esq.
Weisgal & Albert, Esqs.
1 Charles Center
Baltimore, Maryland

Dear Fred:

I enclose a copy of a letter I have sent to Leon Sachs concerning our housing renewal project. I have heard nothing from him since you and I spent the day together two weeks ago.

I hope we can get this project off the ground because it has all kinds of potentialities important to all of us. My letter speaks for itself and I hope some of the information in it will be useful to you. As you know, Frank Kaufman carries a good deal of weight with Leon Sachs and my relations with Frank are quite good and I'm sure that if I spoke to Frank he would also, in addition to your own activities, be glad to urge Leon on.

By the way, I met Jack Blum at the American Bar Association convention in Baltimore (I still am not certain why I went because for the large part it was terribly boring) and he advised me of some of the late events. Is there anything you want me to do? What is happening to the final settlement and who will prepare the actual agreement when the settlement takes place?

With warm personal regards and my rememberances to Sid and the students.

Cordially,

CR/tp
Encl.

Carl Rachlin
General Counsel

Baltimore

JOSEPH BERNSTEIN
ELI FRANK, JR.
HOWARD H. CONAWAY
GEORGE GUMP
FRANK A. KAUFMAN
ROBERT M. GOLDMAN
JOHN H. HEROLD
M. PETER MOSER
LAWRENCE F. RODOWSKY
JOHN A. O'CONNOR, JR.
LEONARD E. COHEN
SHALE D. STILLER
ROBERT G. LEVY

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RONALD P. FISH
PETER F. AXELRAD
JERRY B. CHARITON

COUNSEL
RAPHAEL WALTER

September 6, 1966

Carl Rachlin, Esquire
Scholarship, Education and Defense
Fund for Racial Equality
150 Nassau Street
New York, New York 10038

Dear Carl:

Since receiving your letter of July 26, 1966, I had hoped that we would run into one another, but, as you will remember, I was in New York when you were in Baltimore and then I was on vacation. Clem and I leave tomorrow to drive Peggy to college. On our return, we would hope that we will get a chance to see you in Baltimore.

I have discussed with Leon Sachs and have also heard from Ed Lukas in connection with the ideas discussed in your July 26th letter and related possibilities. When we next see each other in Baltimore, I hope we will have a chance to explore them further. Meanwhile, we have had several discussion meetings here in Baltimore which possibly could lead to some action along the lines you have in mind. Perhaps now that summer is over, things can move into higher gear.

Best regards.

Sincerely,

Frank A. Kaufman

FAK/tcl

1508 FIRST NATIONAL BANK BUILDING

October 12, 1966

Balt

Carl Rachlin, Esquire
150 Nassau Street
New York, New York 10038

Dear Carl:

Many thanks for your congratulations which are greatly appreciated.

Best regards.

Sincerely,

Frank A. Kaufman

FAK/tcl

I hope to see you soon. Clem joins in best regards.

[9/30/65]

BALTIMORE CORE
904 N. Gay Street
Baltimore, Md. 21205
327-9442

REPORT ON LEGAL CLINICS

A summary and analysis of the legal clinic during the summer of 1965.

BALTIMORE CORE

COMMUNITY ORGANIZATION COMMITTEE

For the use of CORE only

REPORT ON LEGAL CLINICS

As part of the Law Students Civil Rights Research Council summer program. Norman Hill, a Stanford law student, set up several legal clinics for the poor in Baltimore. The clinics involved having a law student present in the CORE office at 904 North Gay Street on Friday evenings and in the UJOIN office on Baltimore Street on Monday evenings to help people with their legal problems. Later in the summer, another law student volunteered to help and opened the clinic in the CORE office on Monday evenings for about one month.

The legal clinic program was intended to make the poor more aware of their legal rights and the legal services available to them. Poor people have long been cut off from legal assistance and advice with the result that landlords, merchants, employers, and other people have been able to intimidate slum dwellers with baseless legal threats. With more knowledge of legal rights and services, the poor might become more resistent to intimidation and might begin to think that they can take part in the society around them.

The program started when Fred Weisgal had a meeting in his home on June 21, 1965, to introduce the leaders of CORE and three law students of the L.S.C.R.R.C. The next week, one of the students called Bill Bush at CORE to make final arrangements for the clinic. The first clinic was scheduled for July 2, and the clinic was open every Friday evening until August 20. Jerry MacIntyre, a Yale law student working in Baltimore for the summer, volunteered to operate the clinic on Monday nights, and he was present in the CORE office on Monday nights from July 12 until August 9. A similar clinic was held in the UJOIN office on East Baltimore Street on Monday evenings from July 5 until August 9 when UJOIN closed that office.

On the first night of the program, a man came in with a workman's compensation problem. The handling of this case was typical of all the problems that people brought in. The manhad heard about the clinic through the neighborhood grapevine, and he asked CORE about it during the week. The CORE members told him to come back Friday night to see the law student. On Friday night the law student explained that he was not a lawyer but that he would try to help. He then asked to hear the man's story to see whether there was anything that either CORE or a lawyer could do. After the man told his story, the student went back through it to pick out the important facts. In this case, the student did not know the law about Maryland workman's compensation, so he told the man that he would check the law during the week. By next Friday, the student had checked the law and had written a list of things the man could do, including four different ways of getting a lawyer:

1. To go to the Legal Aid Bureau (phone number and address)
2. To go to the Lawyers' Referral Service in the Court House (phone number and address)
3. To ask friends if they knew a good and trusted lawyer.
4. To ask organizations like CORE, UJOIN, and Urban League, or a church whether they knew of a good lawyer.

In other cases, the law student invited regular members of CORE into the discussions to see whether there were ways that CORE itself could try to help the problem. In the case of a woman complaining of arbitrary and discriminatory actions by the University Hospital toward its employees, the CORE members suggested that CORE intervene directly with negotiations on behalf of all the employees.

During the summer, people brought inproblems involving workman's compensation, divorce, personal injuries, trouble with the police, rent problems with landlords, and discrimination by employers in dealing with employees. Sometimes people came in by themselves. Once a wife came in with her husband's problem, and in another case, all contacts with a tenant were handled over the telephone through a CORE member. Although the program was advertised by a sign in the window, most people learned about the program through converstaions in the neighborhood.

The greatest problem was that so few people took advantage of the program. On several evenings, no one came in at all, and never did people bring in more than two problems in one evening. This problem of limited use of the program may be traced to several causes. First could be inadequate publicity. The sign in the window would draw only a limited number of people, and more active publicity by CORE would help. Second, people might believe that the law would always be on the side of landlords and employers regardless of what happened, and that any effort on their own part would be wasted. This belief could be overcome only by the successful experience of some people in the neighborhood over a period of time. To deal with this problem, CORE should stress that any services inits office are free and that indigent people can get free help through the Legal Aid Bureau. Further, it is essential to keep the clinic open so that people can see the connection between the clinic and the benefits from it. Successful results from this summer's program may come during the winter, and people might forget about them if the program is not started again until next summer. Third, the sight of a person in white shirt and tie may arouse suspicion, hostility, and fear due to past, bad experiences with people in business suits. But these fears should be partly overcome by locating the clinic in the CORE office because people know that CORE is trying to help them.

Another problem may be the disappointment people feel when they find that the legal clinic does not provide them with a regular lawyer. Several of the people who came in with problems were disappointed that the law student could not take their case to court. This is a problem that the clinic will have to live with unless the program canget regular lawyers to volunteer their time and services. But even using law students, the program performs the valuable function of making people more aware of their rights and in giving them advice about the bigger step of going to a lawyer. Instead of offering services on a silver platter, the program advises people how to help themselves.

Still another problem lay in the legal problems of the program itself. The combination of posting the sign in the window and offering advice on problems prings the program dangerously close to illegal solicitation. The whole idea of legal services to the poor is new, and anyone operating the clinic will have to be cautious in offering advice for fear that he may be stepping over the line into illegal practice of law. Since the program will have to depend largely on law students, regular lawyers assisting the program will have to give the students careful advice on how to give other people advice.

The problem of illegal solicitation may become worse because some lawyers will be antagonized by the legal clinic program. Several of the people who came in with problems had already been to lawyers and were dissatisfied by the service they were receiving. They wanted to know what they could do to get new lawyers on their cases. Legally, a client can usually change lawyers or fire a lawyer at almost any time, but by Baltimore custom, one lawyer will not touch a case while another lawyer is handling it. The result is that clients have great difficulty changing lawyers, for they can rarely learn what their rights are against their own lawyers. If the legal clinic joins the conspiracy of silence and refuses to touch a problem if the person has already been to one lawyer, it will deny people valuable service. If the clinic tells people their rights in firing and changing lawyers, it might antagonize many Baltimore lawyers who might then try to press charges of solicitation against the clinic.

The legal clinic program can be improved in several ways. First, it should have more publicity. The sign in the window is good, but the program needs more active publicity through conversations in the neighborhood. Second, the effort should be spread to different parts of the city instead of concentrating it on the Gay Street area. Holding the clinics in both the CORE Gay Street office and the UJOIN Baltimore Street office was good, but instead of having the clinic opened two nights a week in the Gay Street the nights should be split up between the Gay Street and North Avenue offices.

Although the legal clinic had a slow start this summer, it should be continued. The program did help a number of people by making them more aware of their legal rights and of the legal services available to them. With the suggested changes, the clinic should give the poor a stronger position vis a vis employers, landlords, and merchants who now take advantage of the ease with which they can intimidate the poor.

****

9-30-65

although, on informations and belief, said minutes were filed in this Court during the month of March. The delay was through no fault of any attorney for appellants or any of the appellants themselves. During the intervening period, there would have been no point in moving this court for an extension of time in which to prosecute the appeal since counsel had no idea of the date by which the minutes would be ready.

666. In addition, counsel wished to await a final determination in the case of *People* v. *Penn* which wax made at approximately end of April, 1966.

7. The questions of law and fact presented in the cases of all defendants named in the caption are identical. In fact, their trials are all represented in the same set of minutes.

8. In both sets of cases the defendantsappellants entered a public building and proceeded in a peaceful and orderly m manner to exercise their constitutional rights and, based on this, it is my feeling that important questions of law and fact will be presented in these appeals.

9. Neither I nor any attorney who is or has represented any of the defendant-appellants in any stage of this proceedings has solicited or received any fee (whatsoever) for his services or expenses; nor will any fee be sought or accepted by any of said attorneys.

10. No previous application has been made to this or any other court for the relief sought.

WHEREFORE, your deponent prays that an order be entered setting aside the orders dismissing the appeals of Robert Auerbach, et a. pursuant to Rule 111 (11) (c) Rules of the Appellant Term, First Department and Jack Dews et al, for failure to proecute and consolidating these appeals and for a further order granting an extension of time in which to perfect the appeal to the September Term 1966.

sworn to before me this

day of 1966

Stephen K. Nagler

①

[N.D.]

Gorn et al v. Klaus et al
Judge Harris

Supreme Bench of Baltimore City

Motion to amend title
Baltimore Congress On Racial Equality Inc. and Corp'n

Lawyer (not Clayton) C. Brown Jr.

Opening
Requires balancing conflicting claims
Not seeking to ban demonstrations, will ask Ct to impose regulations

Pet Horizon House - new 70% occupied
apt's and stores - offices for Drs.

Defts (a) Klaus
(b) Luthardt - cand for Dem Governor
(c) CORE group Carter, Green & Mills

(2)

Facts 4/15 — letter to Gov
(in complaint) - asked compliance
with CORE demands

4/17 demonstration - 2 hr -
marched sang etc on sidewalk -
carried signs

ingress & egress interfered
with by demonstration - but
orderly - trespassed on property
of Horizon House - also a
few standing next to door

~~4/24~~ On 4/17 - Klan
observed

4/24 - Klan observed
demonstration - Luthardt appears
& carried a sign -

May 1 CORE picketed
Klan demonstrated
Luthardt

Klan - some wore hoods &
cloaks & carried signs - fastened
to poles - some of which were heavy
also Klan had 3 in
military attire & helmets &
had a dog

also had large ~~ft~~ heavy
flashlights

③

Police out in force
Police marked off areas
CORE confined to Calvert St
South of entrance and Orchard St side of Bldg

Klan confined to North of entrance

CORE people had a few next to marchers

Sidewalk narrow on Calvert
trees near curb - low wall ~~[illegible]~~ on building side - thus sidewalk about 6 ft wide
CORE walked single file but back and forth - thus 2 lines on sidewalk - walked on private property of Klan, on part of time
Lines of demonstrators made it virtually impossible for pedestrian to cross over

May 1 - large group many spectators

CORE & Klan announced they would

④

Re Bock May 8

Pltf proposes

1 - divide into zones

(a) 1st zone - no demonstration in this zone - no cars in this (~~b) the~~ area either

(b) Calvert & Chase N.E corner - as a zone - picketing there - but limited by Ct - no interference with public & keep groups apart

(c) & (d) other corners (2) each be a zone & allow picketing - restricted as to perimeter & to prevent conflict

Klan signs very inflammatory -

Vanmarter - for Klans - why perhaps is to get ~~Klan~~ CORE off street.

Brown - agrees with Platt
as much / opposed to this
picketing as Co is

Fulhardt - agrees with Co
also - but, blames Horrigan
for allowing stationary pickets

Braiterman

⑥

Judge

1 — Segregation not an issue
2 — Co does not wish to stop all picketing

Gorn (Witness)

— pictures 1 - 24

— 25 - Blue print of Horizon House

— 26 - Afro-American "Klan Wickles Klan - objected to

no motion for picture

— 27 -

Cone exh - 1 Letter of 2/7 to Gorn

28 - motion picture

exh 29 - 33 - more pictures allegedly showing blocking of entrance Leventhal, Green & are more Mills

Cone exh - 2 - advertisement showing hrs open

(7)

Sgt Donohue - Baltimore Police

17th April - Core & Futharat
both stated they would picket
~~1~~ 14 officers + Donohue & Lieutenant

24th April - 2-4 PM

1st May 2-5 P.M.

Present during all picketing

on 17th about 70+ people were
24th

onlookers about 50

24th - 45 CORE
& Futharat
onlookers in excess 150

May 1 59 CORE
7 National Alliance
66

Klan 17
3 in uniform
1 Fighting American

⑧

National States Rights Party - not picketing

onlookers about 100

interrupted for chief Inspector Horton

present Apr. 24 & May 1

24th 1:30 - 4:00
1st May 2:10 - 2:40

May 1st - could have been explosive -
on 24th not so bad - but could have been bad also

Police be prepared
need increased man-power

Core exh - 3 -

Back to Sgt Donohue

17th Fuchardt arrived to picket,

1st time had 2 groups -
he walked near the curb

about 3:15 Green protested Fuchardt picketing

a little later another protest - that Fuchardt hit x in Core line in face -

Some more protest
but continued peacefully

on 24th told Green & Fuchardt -
Police placed Fuchardt on North end of building - Core South side of Calvert
had a peaceful uneventful
Core people behaved well.

on May 1 Klan came in -
2:10 started
Fuchardt started
Green
Waimarker
Klan picketed first -
full length of Calvert St.
Klan & Fuchardt 2 north of

marquee - Core front of marquee.
Core sang - marched
each group could hear what other group was saying
also organized groups on other side of street - 10 cops sent there to maintain order.
asked Green to make his closing remarks brief
Told Hairmaster same.

about 4:50 on 1st
Carter Green spoke briefly - & demonstration ended

Hairmaster started to speak -
A group from the Core line disagreed verbally with Hairmaster -
Sgt asked them to stop - they didn't - 2 Klan men came forward
Cops separated

20 pickets

10 from CORE
10 ft apart
2 - 5 P.M. on Sunday
no weapons
clubs
large flashlight
firearms
knives
no large handles on signs
no dogs
picketing on Arizona Press
front
CORE - Smith Building
line to garage
all others on North
side of building
no blocking of entrance
& no blocking of sidewalk
no contact of tenants
no shouting or loud or
raucous singing

no physical or verbal
contact
2 corners of Galvez
& Chase to be kept clear

no trespassing over building line
no parking of cars on east
~~car~~ curb on Calvert St.

~~Calvert~~ Klans can wear
robes — signs are disgusting
but Ct can't this

List times (dates) each of you - Carter, Green, Mills - have given these "speeches" at end of demonstrations - at the scene of demonstration.

4/17 - Green only
4/24 - Green + Carter
5/1 - Green only

Is Donohue's testimony about the speeches, and behavior of each side substantially correct?

Yes

MSS
546

SEDFRE

BANKS, YVORNIA D. et al vs. CLAIBORNE PARISH SCHOOL BOARD et al., 1965-1966
(SCHOOL DESEGRATION CASE)

Box
Folder

State Historical Society of Wisconsin

Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

YVORNIA DECAROL BANKS, MIKE KENSEY BANKS, and LAVORN BANKS, by their parent and next friend, GRANT K. BANKS; JERRY LEE WAFER, TOMMY LEE WAFER, and BETTY JEAN WILLIS, by their parent and next friend, GEORGE DODD, and all others similarly situated, Plaintiffs, vs. CLAIBORNE PARISH SCHOOL BOARD, a corporation, HARRY McKENZIE, JR., President of the CLAIBORN PARISH SCHOOL BOARD, and F.C. HALEY, Superintendent of Schools of Claiborne Parish, Defendants.	CIVIL ACTION NO 11304 TEMPORARY RESTRAINING ORDER

TO THE HONORABLE THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT (LOUISIANA) DIVISION:

WHEREAS in the above named cause it has been made to appear by the verified complaint and supporting affidavit filed herein on the ___ day of August, 1965, presented to the Honorable ______________________________, Judge of the United States District Court for the Western District of Louisiana, and

WHEREAS the defendants' unlawful acts in maintaining and operating a compulsory racially-segregated public school system in Claiborne Parish, Louisiana and in denying all Negroes admission to the "white" schools in Claiborne Parish violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, the laws enacted pursuant thereto, and the decisions of the United States Supreme Court, and

WHEREAS notice and hearing before entering a temporary restraining order should not be required because the plaintiffs have no adequate remedy at law, no injury can be caused defendants by such order, and the discriminatory policy of the defendants is palpably in violation of the laws of the land,

Now, therefore, on motion of the plaintiffs;

IT IS ORDERED that the defendants, Claiborne Parish School Board, Harry McKenzie, Jr., President of the Claiborne Parish School Board, F.C. Haley, Superintendent of Schools of Claiborne

Parish, and each of them, and their officers, agents, servants, employees, and attorneys, and those in active concert or participation with them who receive actual notice of this order by personal service or otherwise, be hereby enjoined:

1. From continuing to operate compulsory racial school segregation in the Parish of Claiborne, Louisiana;

2. From continuing to maintain dual schemes or patterns of school zone lines or attendance area lines based on race or color;

3. From making initial assignments of pupils to the public schools of Claiborne Parish, Louisiana on the basis of race or color;

4. From assigning teachers, principals and other professional personnel to the public schools under their respective jurisdiction on the basis of race or color;

5. From approving employment contracts, budgets and distributing funds on the basis of race or color;

6. From constructing elementary and high schools in Claiborne Parish, Louisiana on the basis of the dual attendance areas based on race or color;

7. From programming and supporting extracurricular activities which are limited solely to one or the other of the races;

8. From continuing to make any other distinctions in the operation of the schools under their respective jurisdictions which are based solely on race or color;

AND IT IS FURTHER ORDERED that the defendants, the Claiborne Parish School Board, Harry McKenzie, Jr., President of the School Board, F. C. Haley, Superintendent of Schools of Claiborne Parish, and each of them, and their officers, agents, servants, employees, and attorneys, and those in active concert or participation with them who receive actual notice of the order by personal service or otherwise, present a complete plan for the reorganization of the entire school systems under their respective jurisdictions into unitary, nonracial systems which shall include plans for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis; the drawing of school zones or attendance area lines on a nonracial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis and the elimination of any other discrimination in the operation of the school systems or curricula under their respective jurisdictions which are based solely on race or color. Said defendants are further directed to effectuate said plan on or by August 30, 1965.

AND IT IS FURTHER ORDERED that the defendants, the Claiborne Parish School Board, Harry McKenzie, Jr., President of the School Board, F. C. Haley, Superintendent of the Schools of Claiborne Parish, and each of them, and their officers, agents, servants, employees, and attorneys, and those in active concert or participation with them who receive actual notice of the order by personal service or otherwise, immediately admit or cause to be admitted the named plaintiffs to the white school nearest their homes.

United States District Judge

AFFADAVIT IN SUPPORT OF PRAYER FOR TEMPORARY RESTRAINING ORDER

STATE OF LOUISIANA

PARISH OF ~~CLAIBORNE~~ Caddo

BEFORE ME, the undersigned authority, personally came and appeared:

MR. GRANT KENNETH BANKS

who after first being duly sworn did depose and say that he is a Negro citizen of the United States and the state of Louisiana, domiciled in the parish of Claiborne; that he is a taxpayer, home owner, and father of children attending Claiborne Parish Public Schools; that all public schools in the parish are and have been for years operated on a segregated and discriminatory basis; that affiant's children have suffered past harm and injury by being forced to attend a segregated school pursuant to the custom and policy maintained in Claiborne Parish; that affiant fears that unless his children receive immediate relief, that is unless his children are enrolled in an integrated school, that they will continue to suffer irreparable harm and injury by being deprived of the education to which they are constitutionally entitled.

Attest: s/Hellen O'Neal
(Hellen O'Neal)
s/Bertha M. Gilman
(Bertha M. Gilman

s/ Grant K. Banks
Mr. Grant Kenneth Banks

Sworn to and subscribed before me on this 9th day of August, 1965.

s/ Jerome T. Powell
Notary Public

AFFIDAVIT IN SUPPORT OF PRAYER FOR TEMPORARY RESTRAINING ORDER

STATE OF LOUISIANA

PARISH OF CADDO

BEFORE ME, the undersigned authority personally came and appeared:

MR. GEORGE DODD

who after first being duly sworn did depose and say that he is a Negro citizen of the United States and the state of Louisiana, domiciled in the parish of Claiborne Parish Public Schools; that all public schools in the Parish are and have been for years operated on a segregated and discriminatory basis; that affiant's children have suffered past harm and injury by being forced to attend a segregated school pursuant to the custom and policy maintained in Claiborne Parish; that affiant fears that unless his children recieve immediate relief, that is unless his children are enrolled in an integrated school that they will continue to suffer irreparable harm and injury by being deprived of the education to which they are constitutionally entitled.

Attest: s/Hellen O'Neal

s/Bertha M. Gilman

s/George Dodd
Mr. George Dodd

Sworn to and subscribed before me on this 9th day of August, 1965.

s/Jerome T. Powell
Notary Public

8-12-65: A-8 PHS

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

VERNA JEAN BANKS, PPA et al.,)
Appellants,) NO.
vs.) APPELLANTS' MOTION FOR INJUNCTIVE RELIEF PENDING APPEAL
CLAIBORNE PARISH SCHOOL BOARD, et al.,)
Appellees)

Appellants move this Court for injunctive relief pending appeal to require the desegregation of the public schools of Claiborne Parish under a school desegregation plan for the year 1965-1966.

As grounds for this motion appellants state the following:

1. Appellants are Negro children and the representatives of Negro children enrolled, or eligible to enroll, in the public schools of Claiborne Parish.

2. Appellees are the Claiborne Parish School Board, the President of said Board, and the Superintendent of Schools of said Parish.

3. On August 10, 1965, appellants, on behalf of themselves and in behalf of other Negro students residing in Claiborne Parish, filed the complaint in this action, under Section 1343(3) of Title 28, United States Code, in the Shreveport Division of the United States District Court for the Western District of Louisiana. (A copy of the complaint is affixed hereto). The complaint alleged that appellees, acting under color of authority of the laws of the State of Louisiana, the regulations of the Claiborne Parish School Board and the customs and usages of said State and School Board, are operating a compulsory biracial school system in violation of appellants' rights under the equal protection clause of the Fourteenth Amendment of the United States Constitution and appellants' rights under Title IV of the Civil Rights Act of 1964 (78 Stat. 241). Appellants sought an injunction against the continued operation of a biracial school system in Claiborne Parish.

4. The appellees have not yet filed an answer.

5. On August 10, 1965 the Court refused to sign a Temporary Restraining Order and also refused to sign an Order to Show Cause why a preliminary injunction should not issue.

6. That on August 13, 1965 appellants filed a notice of appeal to this Court.

7. The appellees have flouted the Supreme Court's mandate in the case of Brown v. Board of Education for over eleven years. The appellees not only have failed to take any steps to implement the clear mandate of the Court for over a decade, they have failed to take any steps to formulate a plan for the desegregation of the Claiborne Parish school system. The appellees can have no defense for there is no defense. The appellees, however, will undoubtedly contend that, because of the pressures of time, they are unable to make any start toward the desegregation of the Claiborne Parish schools commencing this fall. This contention is foreclosed by this Court's recent decrees.

In Singelton v. Jackson Municipal Separate School District, No. 22527 (June 22, 1965) this Court made it unequivocally clear that:

> "The time has come for foot-dragging public school boards to move with celerity toward desegregation. Since May 17, 1954 public school boards throughout the country have known that they must desegregate their schools."

In implementation of this view, this Court has laid down clear standards for the minimum requirements that must be met for the 1965-66 school year. Armstrong v. Board of Education of the City of Birmingham (5 Cir. 1964) 333 F. 2d 47; Davis v. Board of School Commissioners of Mobile County (5 Cir.) 333 F. 2d 53; Stell v. Savannah-Chatham County Board of Education (5 Cir. 1964) 333 F. 2d 55; Gaines v. Dougherty County Board of Education (5 Cir. 1964) 334 F. 2d 983; Price v. Dennison Board of Education, No. 21632 (July 2, 1965) and Singelton v. Jackson Municipal Separate School District, No. 22527 (June 22, 1965). Indeed, this Court has reversed desegregation plans approved by lower courts on the ground that the plan, while allowing for some desegregation for the 1965 school year, did not cover enough grades.

Here, the District Court has foreclosed the possibility of *any* desegregation for 1965-66. In this extreme circumstance, injunctive relief pending appeal is absolutely essential. If injunctive relief is not granted, the rights of those Negro students who would be assigned to desegregated classes for 1965-1966 under an adequate desegregation plan will be forever lost. For this reason, those students will suffer irreparable injury.

8. The action of the District Court denying appellant the benefit afforded by the above cited decisions of this Court will result in irreparable injury if injunctive relief pending appeal is not granted by this Court immediately in that the school year will begin in Claiborne Parish on August 30, 1965. Appellants are cognizant of the rulings, both in the second *Brown* case (*Brown v. Board of Education*, 349 U.S. 294, 1955 and in *Cooper v. Aaron*, 358 U.S. 1, 1958), that some delay in the desegregation of a particular school or system may be countenanced and tolerated where and only where, there has been a showing of unavoidable necessity for such delay.

As was set forth by the Supreme Court in *Cooper v. Aaron*, (supra) at page 7:

> "On the other hand, a District Court after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), might conclude that justification existed for not requiring the present nonsegregated admission of *all* qualified Negro children. *In such circumstances, however, the courts should scrutinize the program of the school authorities to make sure that they had developed arrangements pointed toward the earliest practicable completion of desegregation, and had taken appropriate steps to put their program into effective operation*. It was made plain that delay in any guise in order to deny the constitutional rights of Negro children could not be countenanced, and *that only a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools could constitute good faith compliance*. State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." (emphasis added).

The second Brown case (Brown v. Board of Education, supra, at page 300) sets the conditions for permitting any such delay. The Court there stated:

> "The courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner." (emphasis added)

In the instant case, however, in asking for a delay, the appellees would merely be seeking to continue the operation of a biracial school system in violation of the equal protection clause of the Fourteenth Amendment without ever having evidenced any good faith step toward compliance. Further delay would only serve to aggravate the problem. This Court has recognized this when, in the Singelton case, supra, the Court said that:

> "A slow-down now will only multiply a school board's administrative difficulties"

and also that

> "If judicial standards are lower, recalcitrant school boards in effect will receive a premium for recalcitrance; the more intransigence, the bigger the bonus." (emphasis

This, then, is the essence of appellees' case: They have delayed so long that, by virtue of their delay, they now seek to be allowed to delay even longer.

Appellants respectfully submit that appellees' position is untentable and that under no interpretation of the cases can their position be considered to meet the good faith requirement. Appellants further submit that, having shown no good faith, the appellees are not entitled to any further delay in the formulation and implementation of a plan to desegregate and that the District Court abused its discretion and committed reversible
grant either the TRO or the Order to Show
error by refusing to make any order with regard to the 1965-1966 Cause
& thereby
effectively
withheld [illegible]
school year.

9. The relief requested by appellants - an injunction requiring desegregation, pending appeal, from an order of the District Court denying such relief - has been recognized by this

Court as proper and has been granted on numerous occasions where to have done otherwise would have resulted in irreparable damage; Stell v. Savannah-Chatham County Board of Education, 318 F.2d 425 (1963); Harris v. Gibson, 322 F. 2d 780 (1963); Davis v. Board of School Commissioners of Mobile County, 322 F.2d 356 (1963). This Court in the above cases, upholds the statutory authority for this action, 28 U.S.C., Sec. 1651. In Davis, supra, the Court granted the relief in a case quite similar to the one at bar. The appellees had alleged and the District Court found that, because of the time factor, the administrative burden placed upon the school system would be too great to implement any plan for desegregation. The Court in that case stated:

> "The administrative problem is not one created by the plaintiffs. They have for nearly a year sought without success to get the school authorities to desegregate the schools." (emphasis added)

The Court also stated:

> "At this late date the plaintiffs, who represent Negro children who are presently being denied constitutional rights, are entitled to minimum effective relief. . . . it means that effective relief is denied for another school year with no assurance that even at such later date anything but a reaffirmation of the teaching of the Brown decision will be forthcoming." (emphasis added)

Absent the showing of an attempt in good faith to formulate and implement a plan as required, it is submitted that the appellees are not and should not be entitled to any further delay in the desegregation of the schools within its jurisdiction. It is submitted that the only reasonable conclusion to be drawn from the appellees' inactivity is that they are solely interested in forestalling the implementation of the rights of Negro citizens in Claiborne Parish and will continue to ignore the Supreme Court's mandate in Brown. It is respectfully submitted that the School Board's scheme should not be permitted to frustrate further the spirit and the letter of the law. Administrative mechanics should not be given higher priority than long-awaited constitutional rights.

WHEREFORE, appellants pray that this Court grant their motion for injunctive relief pending appeal requiring the desegregation of the public schools of Claiborne Parish on or before August 30, 1965, or for such other and further relief as this Honorable Court deems just, equitable and proper. Appellants further pray that this Honorable Court act on this motion in sufficient time to allow the implementation of the Court's injunction by the opening of school at the end of August, 1965.

Respectfully submitted,

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana 70113

By ______________________________

Of Counsel:

HARRIS DAVID, ESQ.
2211 Dryades Street
New Orleans, Louisiana 70113

ALVIN J. BRONSTEIN, ESQ.
603 N. Farish Street
Jackson, Mississippi

HASKELL A. KASSLER, ESQ
ONE STATE STREET
BOSTON, MASSACHUSETTS

CERTIFICATE

I hereby certify that a copy of the above Motion for Injunctive Relief Pending Appeal has been served upon defendants-Harry McKenzie, Jr., President of Claiborne Parish School Board, F. C. Haley, Superintendent of Schools, and Claiborne Parish School Board - by letters, addressed to them and it, and each of them, by posting same in the U.S. Mails, on August 13, 1965 with sufficient postage thereto attached in each instance.

Mack Farmer

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

VERNA JEAN BANKS, by her parent and
next friend, EMERSON BANKS, JERRY
LEE WAFER, by his parent and next
friend, GEORGE DODD, and all others
similarly situated,

Plaintiffs

vs. CIVIL ACTION NO. 11304

CLAIBORNE PARISH SCHOOL BOARD, a
corporation, HARRY McKENZIE, JR.,
President of the Claiborne Parish
School Board, and F. C. HALEY, Superintendent of
Schools of Claiborne Parish,

Defendants.

* *

REQUEST FOR ADMISSIONS
(Federal Rule 36 (a)

Plaintiffs request defendants within ten (10) days after service of this request to make the following admissions for purposes of this action only and subject to all pertinent objections to admissibility which may properly be interposed at trial;

That each of the following statements are true:

1. Plaintiff Verna Jean Banks is an infant.
2. Plaintiff Jerry Lee Wafer is an infant.
3. Each of the above-named plaintiffs is a Negro.
4. Each of the above-named plaintiffs is a citizen of the United States.
5. Each of the above-named plaintiffs is a resident of the State of Louisiana.
6. Each of the above-named plaintiffs is domiciled in Claiborne Parish, Louisiana.
7. Plaintiff Emerson Banks is a registered voter of Claiborne Parish, Louisiana.
8. Plaintiff George Dodd is a registered voter of Claiborne Parish, Louisiana.
9. Plaintiff Emerson Banks is the father of plaintiff Verna Jean Banks.
10. Plaintiff George Dodd is the paren t of plaintiff Jerry Lee Wafer.
11. The infant plaintiffs are students in the free public schools of Claiborne Parish, Louisiana.
12. In the said free public schools of Claiborne Parish, there are other infant Negro students.
13. Defendant Claiborne Parish School Board (hereinafter referred to as "Board") is a public corporate body.

ant

14. Defend/Board is the governing authority of the school district of Claiborne Parish, Louisiana.

15. Defendant Harry McKenzie, Jr., is President of defendant Board.

16. Defendant F. C. Haley is Superintendent of Schools in Claiborne Parish, Louisiana.

17. Defendant Board is charged by the laws of the State of Louisiana with the duty of operating the system of free public schools in Claiborne Parish, Louisiana.

18. Defendant Board is presently operating such system.

19. No Negro child has ever been a student in the same school simultaneously with a white child or children in any school operated by defendant Board or subject to its jurisdiction.

20. During the school term which terminated in the Spring of 1965, no Negro child was a student simultaneously in any class in which a white child or children were students in any class in any school operated by defendant Board or subject to its jurisdiction.

21. No Negro teacher has ever taught a class in which there was or were a white child or children in any school operated by or subject to the jurisdiction of defendant Board.

22. During the school term which ended in the Spring of 1965, no Negro teacher taught a white child or children in any school operated by or subject to the jurisdiction of defendant Board.

23. No white child has ever been a student in the same school simultaneously with a Negro child or children in any school operated by defendant Board or subject to its jurisdiction.

24. During the School term which terminated in the Spring of 1965, no white child was a student simultaneously in any class in which a Negro child or children were students in any school operated by defendant Board or subject to its jurisdiction.

25. No white teacher has ever taught a class in which there was or were Negro child or children in any school operated by or subject to the jurisdiction of defendant Board.

26. During the school term which ended in the Spring of 1965, no white teacher taught a Negro child or children in any school operated by or subject to the jurisdiction of defendant Board.

27. The system of schools operated by defendants consists of several schools located at public places within the Parish of Claiborne. Some of the said schools have only white pupils.

28. No Negro teacher is employed to teach in any of the schools where only white children attend.

29. Students are initially assigned to a particular school by defendant Board based upon the race or color of the student being assigned.

30. Principals, teachers, other professional personnel are assigned to schools within the jurisdiction of defendants on the basis of race or color, among other considerations.

31. No white teacher is employed to teach in any of the schools where only Negro children attend.

32. Certain schools under defendants' jurisdiction are designated as white.

33. Certain other schools under defendants' jurisdiction are designated "Negro."

34. There are twelve (12) free public schools under defendants' jurisdiction.

35. Of the said twelve (12) free public schools, six (6) are designated as "Negro" by defendants.

36. Defendants maintain records as "Negro! for the said six schools designated by them as "Negro" and submit reports to various agencies, including agencies of the State of Louisiana accordingly.

37. The said six free public schools so designated as "Negro" by defendants are:

(a) Hillcrest School (Grades 1-12), Athens, La. 71003

(b) Mayfield School (Grades 1-12)
Homer, Louisiana, 71040

(c) Mt. Olive School (Grades 1-8)
Bernice, Louisiana, 71222

(d) Pineview School (Grades 1-12)
Lisbon, Louisiana, 71048

(e) Rosenwald School (Grades 1-12)
Junction City, Arkansas, 71749

(f) Woodson School (Grades 1-12)
Haynesville, Louisiana, 71039

38. The remaining six (6) free public schools are designated by defendants as "White."

39. Defendants maintain records as "White" for the said six schools designated by them as "white" and submit reports to various agencies, including agencies of the State of Louisiana, accordingly.

40. The said six free public schools so designated as "white" by defendants are:

(a) Athens School (Grades 1-12)
Athens, Louisiana, 71003

(b) Haynesville School (Grades 1-12)
Haynesville, Louisiana, 71039

(c) Homer School (Grades 1-12)
Homer, Louisiana, 71040

(d) Junction City School (Grades 1-12)
Junction City, Arkansas, 71749

(e) Lisbon School (Grades 1-12)
Lisbon, Louisiana, 71048

(f) Summerfield School (Grades 1-12)
Summerfield, Louisiana, 71079

41. The aforementioned six schools designated as "Negro" by defendants have (within a 5% margin of accuracy) 2884 students, all of whom are Negro.

42. The aforementioned six schools designated as "Negro" by defendants have (within a 5% margin of accuracy) a total of 120 teachers, all of whom are Negro.

43. The aforementioned totals are made up (within a 5% margin of accuracy)as follows:

(a) Hillcrest School
Students: 478
Teachers: 21

(b) Mayfield School
Students: 973
Teachers: 40

(c) Mt. Olive School (grades 1-8 only)
Students: 162
Teachers: 7

(d) Pineview School
Students: 440
Teachers: 18

(e) Rosenwald School
Students: 65
Teachers 3

(f) Woodson:
Students: 726
Teachers: 31

44. The aforementioned six schools designated as "white" by defendants have (within a 5% margin of accuracy) a total of 2067 students, all of whom are white.

45. The aforementioned six schools designated as "white" by defendants have a total of at least 107 teachers, all of whom are white.

46. The aforementioned totals are made up (within a 5% margin of accuracy) as follows:

(a) Athens School
Students: 254
Teachers: 14

(b) Haynesville School
Students: 844
Teachers: 39

(c) Homer School
Students: 708
Teachers: 33

(d) Junction City School
Students: 19
Teachers 2

(e) Lisbon School
Students: 106
Teachers: 9

(f) Summerfield School
Students: 136
Teachers: 10

47. There have been and are fewer teacher per pupil in the aforementioned Negro schools than in the aforementioned white schools.

48. In the aforementioned six schools designated as Negro by defendants, there are (within a 7% margin of accuracy) 15,949 books in the school libraries.

49. In the aforementioned six schools designated as white by defendants, there are (within a 7% margin of accuracy) 25,001 books in the school libraries.

50. Negro students do not have access and are not permitted access by defendants to the school libraries in the said six schools designated as "white" by defendants.

51. In the six schools designated as "white" by defendants, the total inventory value of school property, buildings, sites and equipment (within a 5% margin of accuracy) is $2,329,611.10.

52. In the six schools designated as"Negro" by defendants, the total inventory value of school property, buildings, sites and equipment (within a 5% margin of accuracy) is $1,366,661.06.

53. Of the six schools designated as "white" by defendants, three are accredited by the Southern Association of Colleges and Schools or the North Central Association of Colleges and Secondary Schools.

54. Of the six schools designated as "Negro" by defendants, none is accredited by the Southern Association of Colleges and Schools or the North Central Association of Colleges and Secondary Schools.

55. Defendants operate a program of extracurricular activities as part of, or in association with the schools operated by them.

56. Such extracurricular activities are operated separately for Negro and white, on the basis of race.

57. Defendants have had knowledge of the fact that compulsory public school segregation based upon race is unconstitutional.

58. Defendants have adopted no plan for desegregation or integration of the teachers, principals or other professional personnel.

59. Defendants have adopted no plan for desegregation or integration of the schools which are under their jurisdiction.

60. Defendants have adopted no plan for the desegregation or integration of the aforementioned extracurricular activities.

61. Defendants have taken no action to conform the operation of the schools subject to their jurisdiction to the requirements set out by the Supreme Court of the United States in the case of Brown v. Board of Education, 74 S. Ct. 686, 347 U.S. 483, 98 L.Ed. 873 (1954), a decision rendered eleven (11) years ago, and which decision has not been overruled nor reversed.

62. The forms of application for admission to the schools under the jurisdiction of defendants are different for Negro and white.

63. The forms of application for admission to the schools under the jurisdiction of defendants provide for inquiry and answer as to whether the applicant is Negro or white.

64. The forms of registration of students employed in the schools subject to the jurisdiction of defendants are designated as to make the designation of the race of the prospective students known to the administrative personnel of such schools.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

ATTORNEYS FOR PLAINTIFFS

BY:______________________

OF COUNSEL:

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JACKSON, MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

YVORNIA DECAROL BANKS, MIKE KENSEY BANKS, and LAVORN BANKS, by their parent and next friend, GRANT K. BANKS; JERRY LEE WAFER, TOMMY LEE WAFER, AND BETTY JEAN WILLIS, by their parent and next friend, GEORGE DODD, and all others similarly situated,

Plaintiffs,

vs.

CLAIBORNE PARISH SCHOOL BOARD, a corporation, HARRY McKENZIE, JR., President of the Claiborne Parish School Board, and F. C. HALEY, Superintendent of Schools of Claiborne Parish,

Defendants.

CIVIL
ACTION
NO. 11304

CERTIFICATE OF SERVICE

I certify that a copy of the REQUEST FOR ADMISSIONS and a copy of the NOTICE OF APPEAL were mailed on August 13, 1965, by United States mail, postage prepaid, to Claiborne Parish School Board, % Harry McKenzie, Jr., President, and F. C. Haley, Superintendent, 415 East Main Street, Homer, Louisiana.

Allen D. Evans
Allen D. Evans

8-20-65

Put in Claiborne Parish School Board File:

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

YVORNIA DECAROL BANKS, ET AL

Appellants

Vs.

CLAIBORNE PARISH SCHOOL BOARD, ET AL

Appellees

No. 22883

APPELLEES' OPPOSITION TO MOTION FOR INJUNCTIVE RELIEF PENDING APPEAL

Appellees file this memo in opposition to Appellants' motion for Injunctive Relief for the following reasons:

Appellants' motion complains about the actions of Appellees in his argumant that it is entitled to this relief when in fact its real complaint is against the action of the Judge of the U. S. District Court for the Western District of Louisiana in refusing to sign a temporary restraining order and an order to show cause why a preliminary injunction should not issue. (See allegation No. 5, page 2 of Appellants' motion).

Although it is true that Claiborne Parish as of now has not initiated a voluntary plan for the desegregation of its school system, it has in no sense flouted the Supreme Court mandate in the Brown case, it has simply abided by a policy established by the school-board, which policy is governed by the consensus of opinion of the constituents of the board members who comprise the electorate responsible for the election of these public officials.

In truth and in fact, when Appellant urges that Appellees have been derelict and negligent in their duty the fact is that Appellants have, too, been derelict and negligent in waiting until such time to exercise their right in a court of law with the inevitable result that when Appellees are afforded their rights to the normal delay, service, notice prescribed by law and the rules of this Court, they have themselves created the situation which will make it difficult, yes, well nigh impossible, for a plan of desegregation to be put into effect in Claiborne Parish at the beginning of the 1965-66 schoolyear. They are demanding equity without doing equity. They are actually complaining, not about the actions of the schoolboard, but about the exercise of a legitimate, legal, logical discression on the part of the District Judge in refusing to sign the temporary restraining order.

Appellees deny that the action of the District Court will result in irreparable injury if injunctive relief, pending appeal, is denied, for the simple reason that it has not been shown and cannot be shown what the Judge of the District Court will do when this matter is presented to it in the ordinary course of business and under the rules of this Court.

Although there have been no decisions which have required desegregation of a school system after the beginning of, or during a school term, it is not beyond the realm of possibility that in a proceeding of this kind when the right of the Court to exercise its discretion in order to grant equitable relief to which claimant may be entitled, that said District Court would see fit to order such a plan in the ordinary course of events in deciding this case. Thus a showing of irreparable injury cannot be made. We submit that injunctive relief, pending appeal, in this matter would be an abuse of the exercise of the supervisory power of this Court and that the District Court should be left to handle this matter.

We specifically deny the statement contained on page 4 of Appellants' motion that the Appellees have asked for a delay and submit again that the action complained of is not any overt act of the Appellees, but the proper exercise of discretion on the part of the District Court. To say that further delay can only serve to aggravate the problem is to say that red plus red equals white.

Regardless of the outcome of this motion, any decree for the desegretation of the Claiborne Parish School System to begin in the 1965 school year will result in confusion for there is not left sufficient time for the orderly implementation of such a decree, unless it be accomplished after the beginning of the school year. In either case then, whether under decree of this Court or under judgment of the District Court, it is physically impossible to orderly implement such decree upon the giving of adequate notice, setting freedom of choice, establishing time for the exercise of those rights and the ultimate assignment of pupils to schools of their choice prior to the beginning of the 1965 school session.

Although we must agree that the relief requested by Appellants is within the authority of this Court to grant, we are sure that in the exercise of this authority this court does not wish to take any action which will result in confusion and instability and be detrimental to any and all students in the educational system affected by it.

For several days counsel for Appellees has made an effort to contact appellants' counsel with a view of having a pretrial conference with the Judge of the District Court for the purpose of submitting factual data to said court, submitting to the jurisdiction thereof, and filing an answer in accord with said agreements so that this matter, for the benefit of all concerned, could be expeditiously handled. Appellees contend their good faith recognizes the mandate of law contained in the Brown case and are willing to abide by any decree of the District Court in these premises.

Injunctive Relief pending appeal will not accomplish the desired results as contended by Appellants. Any decree under this motion would necessarily contain a mandate to the Judge of the District Court to carry out the terms of the Injunction and require a detailed plan of notice, indication of choice and assigment, which will, under the formula set in all of the school cases require the same amount of time regardless of which Court acts in the matter. We contend, therefore, that Injunctive Relief from this Court is unnecessary and that the same result can be accomplished in the District Court in the Western District of Louisiana. This is emphatically true since we already know that the results of the District Court decree are mandatory, as a result of all of the school cases with which we are so familiar that it is unnecessary that they be cited.

WHEREFORE Appellees pray that this Court adopt these results for opposition to the motion for Injunctive Relief pending here and dismiss the same so that the District Court can proceed in an orderly manner to hear and decide the issues and ultimately to issue a decree for the orderly desegregation of the schools of Claiborne Parish, La.

Respectfully submitted.

Fred L. Jackson, District Attorney

Jack P. F. Gremillion,
Attorney General State of La.

Harry J. Kron, Jr.,
Assistant Attorney General

By______________________________

CERTIFICATE

I hereby certify that a copy of the above Motion for Injunctive Relief Pending Appeal has been served upon counsel for Appellants, Robert Collins, Collins, Douglas, & Elie; Harris David, and Alvin J. BRonstein, Jackson Mississippi, Haskell A. Kassler, Boston, Massachusetts, addressed to them, by posting same in the U. S. Mails, on August 20, 1965, with sufficient postage there to attached in each instance.

Harry J. Kron, Jr.

8-24-65

① Put in Claiborne Parish School Case file

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

YVORNIA DECAROL BANKS, MIKE KENSEY BANKS, and LAVORN BANKS, by their parent and next friend, GRANT K. BANKS; JERRY LEE WAFER, TOMMY LEE WAFER, and BETTY JEAN WILLIS, by their parent and next friend, GEORGE DODD, and all others similarly situated,

Plaintiffs

vs.

CLAIBORNE PARISH SCHOOL BOARD, a corporation, HARRY McKENZIE, JR., president of the Claiborne Parish School Board, and F.C. HALEY, superintendent of schools of Claiborne Parish,

Defendants.

CIVIL ACTION
NO. 11304

COMPLAINT

Admitted

1. The jurisdiction of this Court is invoked under Title 28, U.S.C. Section 1343(3). This is a suit in equity authorized by law, Title 42, U.S.C. Section 1983, to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, as hereinafter more fully appears.

Admitted

2. This is a proceeding for a temporary restraining order and injunction enjoining the School Board of Claiborne Parish, Louisiana, the President of the School Board of Claiborne Parish, Louisiana, and the Superintendent of Schools of Claiborne Parish, Louisiana, their members, agents, representatives, employees and sucessors from continuing their policy, practice, custom and usage of maintaining and operating a compulsory racially segregated school system in the said Parish and of assigning students, teachers, and other school personnel to the schools operated and controlled by them on the basis of race.

Admitted except as to existence of a class.

3. Plaintiffs bring this action as a class suit pursuant to Rule 23(a) (3) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of other Negro Children

and their parents similarly situated in the Parish of Claiborne, Louisiana, all of whom are affected by the policy, practice, custom and usage complained of herein as more fully appears. The members of the class on behalf of which plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court. This suit involves common questions of law and fact and common grievances arising out of common wrongs, and common relief is sought for each of the plaintiffs individually and for each member of the class. Plaintiffs fairly and adequately represent the interests of the class.

Admitted

4. Infant and adult plaintiffs are Negro citizens in the United States and the State of Louisiana presently residing in Claiborne Parish, Louisiana. The minor plaintiffs allege that they, and each of them, are currently attending the public free schools of Claiborne Parish. The schools which minor plaintiffs currently attend are all limited by defendants to attendance by Negro children pursuant to the policy, practice, customs and usage of defendants of operating a compulsory, racially segregated school system and assigning school children therein and other personnel on the grounds of race. The minor plaintiffs bring this action by their parents as next friends, pursuant to Rule 17(c) of the Federal Rules of Civil Procedure.

Admitted

5. Defendants are the School Board of Claiborne Parish, a corporate, public body organized and existing under the laws of the State of Louisiana. Harry McKenzie, Jr. is President of the School Board of Claiborne Parish. F. C. Haley is the Superintendent of public schools of Claiborne Parish. The said Board is charged by the law of the State of Louisiana with the duty of operating systems of free public schools in the said Parish and it is presently operating the public schools in the Parish pursuant to those laws. The said School Board is sued in its corporate capacity. The said President and Superintendent are sued in their official and individual capacities.

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Denied 6. Defendants, acting under color of the laws of Louisiana, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school systems in Claiborne Parish on a racially segregated basis. Defendants maintain and operate compulsory segregated school systems by the use of dual school zones or attendance areas; defendants make initial assignments of students to the public schools under their control on the basis of race and color. Principals, teachers, and other professional personnel under defendants jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" or "Negro", as the case may be, are thereafter assigned solely to high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as "Negro", nor are assignments of students, teachers, principals, or other personnel of the Negro race assigned to schools designated as "white". Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the formulation of budgets, and the disbursement of school funds. Specifically, defendants construct elementary and high schools with reference to the maintenance of compulsory, racially-segregated school systems. Defendants herein also limit participation in extracurricular activities in the schools to one or the other race, separately.

Denied 7. Plaintiffs and the members of the class which they represent are irreparably injured by the acts of defendants complained of herein. The continued operation by defendants of compulsory, racially segregated school systems in Claiborne Parish, Louisiana, including the assignment of pupils, teachers, principals and other administrative personnel on the basis of race; the maintenance of dual zone lines or attendance areas based upon race; the operation of the school budgets on the basis of race; the construction of schools on the basis of race; and the programming and planning of extracurricular activities on the basis of race, violate the rights of plaintiffs and the members of the class which they represent secured to them by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court. Any other relief to which plaintiffs and those similarly situated might be remitted would be attended by uncertainty and delay, would involve a multiplicity of suits, cause further irreparable injury, occasion vexation and inconvenience and deny to plaintiffs andthose similarly situated substantial relief.

Admitted 8. In prior school desegregation suits in the State of Louisiana, all state laws requiring compulsory racial school segregation were declared unconstitutional, null and void. In addition, the unconstitutionality of compulsory racial segregation as a general principle was judicially established over eleven (11) years ago in the Brown v. Board of Education case, 347 U.S. 483 (1954). Notwithstanding, the Claiborne Parish School Board has not undertaken any arrangements to desegregate their school system, thereby relieving plaintiffs of the costly necessity of suit. Thus, for having to sue, plaintiffs should be allowed to recover court costs and attorneys fees against defendants.

Admitted 9. The Claiborne Parish public schools will re-open on Monday, August 30, 1965. A restraining order preliminary to hearing upon motion for a preliminary injunction should issue without notice, because immediate and irreparable injury, loss and damage will result to the plaintiffs before notice can be served and a hearing had thereon. Thus, notice and hearing before entering a temporary restraining order should not be required because plaintiffs have no adequate remedy at law and defendants will not be harmed thereby.

Denied

WHEREFORE, plaintiffs respectfully pray that the Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

1. Enter a temporary restraining order, preliminary injunction, and permanent injunction, enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from continuing to operate compulsory racial school segregation in the Parish of Claiborne, Louisiana.

2. Enter a temporary restraining order, preliminary injunction, and permanent injunction enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from continuing to maintain dual schemes or patterns of school zone lines or attendance area lines based on race or color.

3. Enter a temporary restraining order, a preliminary injunction and permanent injunction enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from making initial assignments of pupils to the public schools of Claiborne Parish, Louisiana on the basis of race or color.

4. Enter a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from assigning teachers, principals and other professional personnel to the public schools under their respective jurisdiction on the basis of race or color.

5. Enter a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from approving employment contracts, budgets and disbursing funds on the basis of race or color.

6. Enter a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from constructing elementary and high schools in Claiborne Parish, Louisiana on the basis of the dual attendance areas based on race or color.

7. Enter a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from programming and supporting extracurricular activities which are limited solely to one or the other of the races.

8. Enter a temporary restraining order, preliminary injunction and permanent injunction enjoining defendants, their agents, representatives, employees, successors and all persons in active concert and participation with them from continuing to make any other distinctions in the operation of the schools under their respective jurisdictions which are based solely on race or color.

9. That this Court enter its order allowing, granting and awarding unto plaintiffs court costs and attorneys fees against defendants, jointly and severally.

10. Additionally plaintiffs pray that this Court enter a decree directing defendants, the Claiborne Parish School Board, Harry McKenzie, Jr., President of the School Board, F. C. Haley, Superintendent of Schools of Claiborne Parish, to present a complete plan for the reorganization of the entire school systems under their respective jurisdictions into unitary, nonracial systems which shall include plans for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis; the drawing of school zones or attendance area lines on a nonracial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis and the elimination of any other discrimination in the operation of the school systems or curricula under their respective jurisdictions which are based solely on race or color.

Plaintiffs pray that if this Court directs defendants to submit desegregation plans, that the Court will retain jurisdiction of this case pending court approval and full and complete implementation of defendants' plans.

11. Plaintiffs pray that this Court direct that the named plaintiffs immediately be admitted to the "white" school nearest their homes pending complete de-segregation of the Claiborne Parish Public Schools.

12. Plaintiffs pray that this Court will grant such other, further, additional or alternative relief as may appear to the Court from time to time to be equitable, just and proper.

Respectfully submitted,

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

By ______________________________

Of Counsel:

HARRIS DAVID, ESQ.
932 Royal St., Apt. G
New Orleans, Louisiana

ALVIN J. BRONSTEIN, ESQ.
603 N. Farish
Jackson, Mississippi

VERIFICATION

I, NILS R. DOUGLAS, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana, of the United States District Courts for the Eastern and Western Districts of Louisiana;

That I am the duly authorized attorney for plaintiffs herein authorized to prepare and verify the annexed complaint;

That I have read the annexed complaint and know the contents thereof;

That the facts stated therein are upon information and belief true as stated.

NILS R. DOUGLAS

Sworn to and subscribed
before me this ____ day of
August, 1965.

NOTARY PUBLIC

XERO COPY XERO COPY XERO COPY XERO COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

YVORNIA DECAROL BANKS, MIKE KENSEY BANKS, and LAVORN BANKS, by their parent and next friend, GRANT K. BANKS; JERRY LEE WAFER, TOMMY LEE WAFER, and BETTY JEAN WILLIS, by their parent and next friend, GEORGE DODD, and all others similarly situated,

Plaintiffs

CIVIL ACTION
NO. 11304

vs.

CLAIBORNE PARISH SCHOOL BOARD, a corporation, HARRY McKenzie, Jr., President of the Claiborne Parish School Board, and F.C. HALEY, Superintendent of Schools of Claiborne Parish,

Defendants.

ORDER TO SHOW CAUSE

IT IS ORDERED that defendants, Claiborne Parish School Board, Harry McKenzie, Jr., President of the Claiborne Parish School Board, F.C. Haley, Superintendent of Schools of Claiborne Parish, show cause on ____________________, the _____ day of __________ 1965 at ________ o'clock _______ M. why the preliminary injunction herein prayed for should not immediately issue.

IT IS FURTHER ORDERED that copies of this order to show cause be served upon all parties hereto immediately, and according to law.

SHREVEPORT, LOUISIANA, _____________, 1965.

UNITED STATES JUDGE

8-26-65

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

YVORNIA DEGAROL BANKS, by her parent and next friend, EMERSON BANKS, JERRY LEE WAFER, by his parent and next friend, GEORGE DODD, and all others similarly situated,

Plaintiffs,

vs.

CLAIBORNE PARISH SCHOOL BOARD, a corporation, HARRY McKENZIE, JR., President of the Claiborne Parish School Board, and F. C. HALEY, Superintendent of Schools of Claiborne Parish,

Defendants.

CIVIL ACTION
NO. 11304

ANSWER

1. The allegations of Paragraph 1 of the complaint are admitted.

2. Respondents deny the right of plaintiffs to a temporary restraining order but admit that such respondents are operating a racially segregated school system in Claiborne Parish, Louisiana.

3. Respondents admit that plaintiffs are bona fide residents of Claiborne Parish, Louisiana, but deny their right to sue or seek relief as a member of a class.

4. Respondents admit that plaintiffs are Negro citizens of Claiborne Parish, Louisiana.

5. The allegations of Paragraph 5 do not require an answer.

6. Respondents admit that they are pursuing a policy of operating the public school system in Claiborne Parish on a racially segregated basis, but deny all other representations of said allegation.

7. The allegations of Paragraph 7 of the complaint are denied.

8. Allegation No. 8 of plaintiffs' complaint is a statement of law which respondents are not required to answer.

9. Respondents admit that the public schools of Claiborne Parish will re-open on Monday, August 30, 1965, but deny the remainder of said allegation.

WHEREFORE, respondents respectfully pray that this matter be heard in due course and that after hearing the complaint be dismissed.

Respectfully submitted,

JACK P. F. GREMILLION
ATTORNEY GENERAL OF LOUISIANA

HARRY J. KRON, JR.
ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR RESPONDENTS,
CLAIBORNE PARISH SCHOOL BOARD,
HARRY McKENZIE, JR., IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE CLAIBORNE
PARISH SCHOOL BOARD, AND F. C. HALEY,
IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF SCHOOLS OF CLAIBORNE PARISH.

CERTIFICATE OF SERVICE

I, the undersigned counsel for respondents in this matter, do hereby certify that service of this answer has been made upon Robert F. Collins, 2211 Dryades Street, New Orleans, Louisiana, by placing a copy of said answer in the United States mails at the foregoing address this 26th day of August, 1965.

HARRY J. KRON, JR.

8-26-65

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
AUG 26 1965
EDWARD W. WADSWORTH
CLERK

NO. 22833

YVORNIA DECAROL BANKS, et al.,

Appellants,

vs.

CLAIBORNE PARISH SCHOOL BOARD, et al.,

Appellees

Motion for Injunctive Relief Pending Appeal from the
United States District Court for the Western
District of Louisiana

Before TUTTLE, Chief Judge, BROWN and BELL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that this cause be and it is hereby remanded to the district court for further consideration in light of Singleton v. Jackson Municipal Separate School District, et al., ____ F.2d ____, No. 22527, decided by this Court on June 22, 1965, and Price v. Denison Independent School District Board of Education, et al., ____ F.2d____, No. 21632, decided by this Court on July 2, 1965.

[enclosed, 'Harris' to Rachlin, 1965, Oct. 13]

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
OCT 11 1965
ALTON L. CURTIS, CLERK
BY
DEPUTY

YVORNIA DECAROL BANKS, MIKE KENSEY BANKS, and LAVORN BANKS, by their parent and next friend, Grant K. Banks; JERRY LEE WAFER, TOMMY LEE WAFER, and BETTY JEAN WILLIS, by their parent and next friend, George Dodd; and All Others Similarly Situated

vs. CIVIL ACTION NO. 11304

CLAIBORNE PARISH SCHOOL BOARD; HARRY MCKENZIE, JR., President of the Claiborne Parish School Board; and F. C. Haley, Superintendent of Schools of Claiborne Parish

---

ORDER ON PLAN FOR DESEGREGATION

Respondent, Claiborne Parish School Board, pursuant to this Court's Order of August 27, 1965, has presented to the Court a proposed plan for desegregation of the Claiborne Parish School System. The plaintiffs have presented their objections thereto.

Now, after due consideration of the proposed plan submitted by respondent and the objections thereto presented by plaintiffs, and after taking into consideration the local problems inherent in any attempt to desegregate the public schools in Claiborne Parish, as well as prior pronouncements of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, by which pronouncements this Court is bound:

IT IS ORDERED that the following plan for the orderly desegregation of the schools under the supervision and control of the Claiborne Parish School Board be, and it is hereby, approved and adopted:

1. All initial pupil assignments made for the school year 1965-1966 will be considered adequate, subject however to the following transfer provisions:

    (a) The Claiborne Parish School Board will, not later than January 1, 1966, mail notices to all students, regardless of race or color, presently assigned for the school year 1965-1966 to the First, Eighth, Ninth, and Twelfth grades of any school under its jurisdiction, advising them that they may, within five days thereafter, apply in person, accompanied by parents or guardian, for transfer and reassignment to another school of their choice, effective mid-term January 1966.

(b) Such transfers will be made in accordance with the procedures pertaining to transfers currently in general use by the Claiborne Parish School Board.

(c) Application forms for transfers or assignments will be made available, upon request, by the School Board to all students and parents affected, and complete, detailed instructions as to procedures will be furnished with the applications.

(d) Transfers or assignments, when requested, shall not be unreasonably denied. No denial of a request for transfer or assignment shall be based on race or color. However, in determining whether or not a request for transfer or assignment shall be granted, the School Board, in considering the application for transfer or assignment, may consider the following factors as proper criteria to be applied in granting or denying the request for transfer or assignment:

(1) The desire or wishes of the pupil and his parents or guardian.

(2) Availability of space and other facilities in the school to which the transfer or assignment is requested.

(3) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested.

(4) The availability of requested or desired courses of study in the school to which the transfer is requested.

(5) In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the transfer or assignment to the comparable school closest to the pupil's residence, rather than to the school to which the transfer or assignment was requested.

(6) No pupil will be granted more than one transfer in any one school year, except under special circumstances found justifiable by the School Board.

(7) No request for transfer or assignment may be denied solely on the grounds of technical errors or omissions made by the

applicant or his parents or guardian in the preparation of the application for transfer or assignment.

(3) Any new students, entering the school system for the first time, regardless of grade, shall be entitled to assignment according to their choice to the former all white school or former all Negro school closest to their place of residence.

(e) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment not later than January 14, 1966, to be effective at mid-term, 1966. If such notification is to the effect that the requested transfer or assignment has been denied, specific reasons for such denial shall be clearly set forth in the notification.

2. Commencing with the school year 1966-67 all initial assignments of pupils to the First, Second, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth grades in all schools under the supervision and control of the Claiborne Parish School Board shall be made purely and simply on the basis of individual choice, reserving to

all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

To accomplish this, the Claiborne Parish School Board shall, not later than May 1, 1966, mail notices to all students, regardless of race or color, who can be expected to enroll for the school year 1966-1967 in the First, Second, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth grades of all schools under its jurisdiction, advising them that they may, within five days from the mailing date of such notices, apply in person, accompanied by parents or guardian, for transfer and reassignment to the school of their choice, subject to the rules and procedures above set forth.

3. Commencing with the school year 1967-1968, all initial assignments of pupils to all grades in all schools under the supervision and control of the Claiborne Parish School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through

its authorized representatives, the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

4. Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan.

5. The method of initial assignment herein provided for will, of course, be subject to all reasonable procedural requirements that may be adopted and promulgated by the Claiborne Parish School Board.

6. Nothing contained in this order shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

7. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such rules and procedures shall continue in full force and effect.

IT IS FURTHER ORDERED that respondents herein, and their successors in office, their agents, servants, representatives, or employees, and all other persons whomsoever acting in concert with any and all of such persons, are hereby permanently enjoined from doing anything calculated to obstruct or interfere with the orderly administration of this plan for effecting the transition of the schools hereinabove mentioned to a racially non-discriminatory basis.

Jurisdiction of this matter is retained for the entry of any further orders hereafter deemed necessary in the premises.

SIGNED this _____ day of October, 1965, at Shreveport, Louisiana.

CHIEF JUDGE

Civ 11304

new file

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
SEP
CLERK
BY
DEPUTY

PLAN FOR DESEGREGATING CLAIBORNE PARISH SCHOOLS

WHEREAS, the Claiborne Parish School Board was ordered on August 27, 1965, by the Honorable Ben C. Dawkins, Jr., Chief Judge of the United States District Court, Western District of Louisiana, Shreveport Division, in Civil Action No. 11304, Yvornia Decarol Banks, Mike Kensey Banks, and Lavern Banks, by their parent and next friend, Grant K. Banks; Jerry Lee Wafer, Tommy Lee Wafer, and Betty Jean Willis, by their parent and next friend George Dodd; and All Others Similarly Situated vs. Claiborne Parish School Board; Harry McKenzie, Jr., President of the Claiborne Parish School Board; and F. C. Haley, Superintendent of Schools of Claiborne Parish, to submit to the Court a plan for the desegregation of Claiborne Parish Schools, effective at mid-term, in January, 1966, with all deliberate speed until all grades in all schools are included in accordance with the requirements set forth by the Fifth Circuit Court of Appeals in certain cited cases;

NOW, THEREFORE, BE IT RESOLVED that, to comply with the order of the Honorable United States District Court, to insure the continued orderly and efficient operation of the school system, to instruct the school staffs in handling the problems of desegregation, to insure systematic and orderly procedures of application for pupil assignment, transfer, and/or placement, and to assure the maximum improvement of the educational system, these rules and procedures shall be followed:

1. All pupils attending schools in Claiborne Parish during the present term of 1965-1966 school year will be considered registered in, or assigned to, the schools they are presently attending, subject to the following transfer or assignment provisions:

   (a) The Claiborne Parish School Board will, not later than January 1, 1966, mail notices to all students, regardless of race or color, presently assigned for the school year 1965-1966 to the first, eighth, ninth and twelfth grades of all schools under its jurisdiction, advising them that they may within five days from the mailing date of such notice, apply in person, accompanied by parents or tutor, for transfer and reassignment to the school of their choice at mid-term.

(b) Such transfers will be made in accordance with the procedures pertaining to transfers currently in general use by the Claiborne Parish School Board.

(c) Application forms for transfers or assignments will be made available, upon request, by the School Board to all students and parents affected, and complete, detailed instructions as to procedures will be furnished with the applications.

(d) Transfers or assignments, when requested, shall not be unreasonably denied. No denial of a request for transfer or assignment shall be based on race or color. However, in determining whether or not a request for transfer or assignment shall be granted, the School Board, in considering the application for transfer or assignment, may consider the following factors as proper criteria to be applied in granting or denying the request for transfer or assignment.

(1) The desire or wishes of the pupil and his parents or tutor.

(2) Availability of space and other facilities in the school to which the transfer or assignment is requested.

(3) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested.

(4) The availability of requested or desired courses of study in the school to which the transfer is requested.

(5) In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School

Board may, if it deems it advisable, make the transfer or assignment to the comparable school closest to the pupil's residence, rather than to the school to which the transfer or assignment was requested.

(6) No pupil will be granted more than one transfer in any one school year, except under special circumstances found justifiable by the School Board.

(7) No request for transfer or assignment may be denied solely on the grounds of technical errors or omissions made by the applicant or his parents or tutor in the preparation of the application for transfer or assignment.

(8) Each new student entering the school system for the first time, regardless of grade, shall be entitled to assignment according to his choice to the former all white school or former all Negro school closest to his place of residence.

(9) A transfer may be denied if the pupil's school work is unsatisfactory.

(10) A transfer may be denied if the pupil is known to be a problem pupil.

(e) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment. If such notification is to the effect that the requested transfer or assignment has been denied, specific reasons for such denial shall be clearly set forth in the notification of rejection.

2. The Claiborne Parish School Board will, not later than May 1, 19 mail notices to all students, regardless of race or color, who be expected to enroll for the school year 1966-1967 in the firs second, seventh, eighth, ninth, tenth, eleventh, and twelfth grades of all schools under its jurisdiction, advising them th they may within five days from the mailing date of such notice apply in person, accompanied by parents or tutor, for transfer or assignment to the school of their choice, and all applicatio

received shall be subject to the rules and precedures specified in Paragraph 1(b) through 1(e) above.

3. This planned desegregation shall progress so that all grades shall be included by September, 1967 Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan.

4. Nothing contained in this order shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

5. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such rules and procedures shall continue in full force and effect.

* * * * *

This is to certify that the above resolution was unanimously adopted at a Special Meeting of the Claiborne Parish School Board held on September 20, 1965.

F. C. Haley

F. C. Haley
Secretary

ATTEST:

Harry McKenzie Jr

Harry McKenzie, Jr.
President

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BANKS, et al

vs. CIVIL ACTION NO. 11304

CLAIBORNE PARISH SCHOOL BOARD

* *

OBJECTIONS TO PLAN FOR DESEGREGATION

The plaintiffs herein file the following objections to the proposed plan for desegregation submitted by the defendants pursuant to the order of the court herein, dated September 24, 1965:

1) The proposed plan denies equal protection of the law, pursuant to the Fourteenth Amendment of the United States Constitution, in that the plaintiffs and all others similarly situated, being Negro citizens of the United States, parents of children attending schools operated by the defendants are treated differently from white citizens and must request transfer whereas white citizens need not do so.

2) The proposed plan is cumbersome and places obstacles in the way of parents who wish to make application upon the children's behalf to any school previously all white.

> First, the request by the parent must be made in person to the school board for an application. Secondly, the parent must fill out such applicant pursuant to detailed instructions as to procedures. Thirdly, the parent must run a hostile gauntlet and file such application. Fourthly, a variety of factors upon which the board may deny the request are set forth, each of which is irrelevant to the decree of the court which ordered the desegregation of schools.

Only Criteria 6 and 7 in the proposed plan have any bearing on the order of desegregation issued by this court. The others interfere with the intent of the order of this court and of the Constitution and laws of the United States. By virtue of the Civil Rights Act of 1964, Title IV thereof, all children, regardless of race or color are entitled to attend a desegregated school. Nothing in this plan guarantees that assurance; in fact, to the contrary, the plan is designed to continue Parish schools on a segregated basis under the pretense of being desegregated.

3) The proposed plan is inadequate in that it does not set forth in detail a program which will make certain the schools under its jurisdiction are desegregated. At the very minimum the forms for transfer should be sent to every parent in the parish with a simple explanation of how to effect the transfer of any child and not require all initiative on the parents of Negro children, and none on parents of white children.

4) (a) Criteria 1 is designed to permit unnecessary interrogation of the parent and child as to the alleged desire to transfer.

   (b) Criteria 2 is particularly designed to perpetuate segregation. Unless the children are permitted to transfer automatically, upon reasonable application being filed, the order of this court is thwarted. If 2 were permitted to stand there would never be space for the introduction of Negro children into formerly all white schools.

   (c) Criteria 3 is designed to give the defendant the excuse to reject any particular application for transfer by creating barriers between young children. Children in the same grade level should be in the same grade.

   (d) Criteria 4 is similarly so. It is the duty of the defendant not to create a system which will perpetuate segregation as Criteria 3 is doing. It is the duty of defendant to provide courses for children and not plans to separate them.

   (e) With regard to Criteria 5, precisely the same is true. 2 and 5 together constitute a patent effort to prevent the order of this court being put into effect and so deny the rights of the plaintiffs under the Constitution and laws of the United States. Criteria 5 gives the Board too broad a power in light of the history of segregated schools in this parish.

   (f) Criteria 8 cannot be discussed in full detail except to say it too is designed to prevent desegregation of these schools since the school buildings were constructed with the segregated nature of the housing and residental patterns of the parish in mind and this will merely perpetuate such patterns. In addition allowing the parents and children to select the school of their "choice" is burdensome in that it forces them to run the gauntlet of intimidation to openly declare that they want to integrate and thus to subject themselves to the pressures of a segregated society. Instead the defendants should be required to relieve them of this choice by integrating for them, if desegregation is to become more than token.

(g) All the criteria except 6 and 7 are beyond the power of this board and should be stricken by the court since they are outside the scope of the order of this court and in violation of such order.

(h) Criteria 9 and 10 exemplify the discriminatory nature of this plan. The wide descretion vested in the school board in these criteria affords ample opportunity to perpetuate segregation, which, given the political situation of the school board, is a likely possibility.

(i) With the abolition of dual school districts provided for in point 3 the school board shall submit to the court for approval its maps and plans for a single system of geographic school district.

(j) Unless a plan is proposed that will provide a method wherein defendants fully integrate schools on their own initiative and without requiring a choice and affirmative steps by Negro parents, and unless this method provides that the percentage of Negro children in each classroom approximates the percentage of Negro children in the parish, the order of this court is thwarted, the United States Constitution and the laws of the United States are denied at the very least. The proposed plan should provide that the application of a parent on behalf of a child will be accepted by a simple mechanical method starting from the proposition that all schools are completely open at this time and there are no seats in schools taken as of this time.

It is therefore respectfully requested that this Honorable Court direct the defendant to submit a new plan which will provide:

I. That the Board arbitrarily assign white and Negro children in each grade so that as near as possible each classroom will contain equal numbers of white and Negro students or reflect the population percentages of white and Negro students. This may be accomplished for example by a plan which provides that:

a) All first grade children attend a particular school in the parish, all second grade children attend another school, and third grande etc., through twelve grades or that;

b) All children be assigned on an alphabetical basis. Thus the board may propose a plan that all children whose last name begins with "A" in the first grade shall go to a certain school, "B" to another school, or by a plan which will provide:

c) Any other means not set forth in defendant's plan, nor any of the plaintiffs' proposals that will assure the desegregation of schools into classrooms which are equally divided between white and Negro students or which reflect the population percentages of white and Negro students.

In the event that the defendants show compelling reasons and proof why they cannot desegregate in accordance with the above standards it is respectfully requested that this Honorable Court direct the defendant to submit a new plan which will provide:

II. a) that every parent in the parish be immediately given an application setting forth the desire of the parent as to the school he or she wishes his child to attend.

b) Upon receipt of these applications they shall be filed in numerical order, and shall be fulfilled in the same/numerical order.

c) It shall be assumed that regardless of distance from the child's home, if the parent applies to a particular school he will make certain the child is present at such school unless the parish already provides public transportation for such school.

d) Said application shall provide alternative choices which shall be set forth by the parent in such order as the parents requests; providing there is space in said building for said child under the numerical system provided above, the first choice will be accepted; if such advise is filled then the second or third choice shall be granted.

Respectfully submitted:
For the Plaintiffs,

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

CARL RACHLIN ✓

38 Park Row

NEW YORK, NEW YORK

ALVIN BRONSTEIN

603 N. FARISH STREET

JACKSON, MISSISSIPPI

HARRIS DAVID

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

TO:

Hon. Ben C. Dawkins
U. S. District Judge for
the Western District of
Louisiana, Shreveport Division

Hon. Fred Jackson
District Attorney
Homer, Louisiana

Harry J. Kron
Office of Attorney General
State Capitol
Baton Rouge, Louisiana

Hon. John Doar, Asst. Attorney General
U. S. Department of Justice
Washington, D. C.

Mr. David Seeley, Office of Education
Department of Health, Education and Welfare
Washington, D. C.

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
AUG 27 1965
ALTON L. [illegible], CLERK
BY
DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MARGARET M. JOHNSON,
LONNIE E. JOHNSON, GLENDA
G. JOHNSON, AND KENNETH L.
JOHNSON by their father and
next friend ARMEY JOHNSON;
and CALVIN LEE MARA THOMAS,
by his father and next friend
SANDERS THOMAS, and all Negro students
and parents
similarly situated

vs. CIVIL ACTION NO. 11,130

JACKSON PARISH SCHOOL BOARD,
a Corporation, and
DR. A. A. MEREDITH, President,
and J. D. KOONCE, Superintendent.

MOTION

NOW INTO COURT, through their undersigned counsel, comes the JACKSON PARISH SCHOOL BOARD, DR. A. A. MEREDITH, President and J. D. KOONCE, Superintendent, defendants in the above styled and captioned cause, appearing herein for the purpose of this motion and with respect show and aver:

-1-

That on or about July 22, 1965, in the above styled and captioned cause, your movers herein were ordered by the United States District Court for the Western Distrist of Louisiana, Monroe Division to **submit one or more alternate plans of desegregation in compliance** with the Courts' order within thirty (30) days.

-2-

Your movers further show and aver that since the date of the Order and Decree of the United States District Court for the Western District of Louisiana, Monroe Division, your movers herein have proceeded with the development of such a plan to present to the Court, however, notwithstanding their diligence, your movers herein have been unable to complete the preparation of the plan for its submission to the Court and they are attempting to complete the same with all due diligence.

-3-

Your movers further show and aver that they have had to revise certain proposals by virtue of the decisions that have been handed down by the Federal Courts in order that they comply with the orders of the Court and the interpretation of the Laws of the United States of America.

-4-

Your movers therefore show and aver that they do hereby request an extension of time within which to complete their plan as ordered by the Court and request that the Court grant to them an additional period of twenty (20) days for the purpose of completing such plan before submission to this Honorable Court and request that the attached order be signed granting to them the additional time as requested herein.

WHEREFORE, your movers pray, that this Motion be filed, and that considering the entirety thereof, that this Court sign the attached Order granting unto your movers an extension of time with which to complete its plan for submission to the Court.

Further prays for all other orders and decrees necessary and for general and equitable relief.

FRED JACKSON
District Attorney
Homer, Louisiana

HAL R. HENDERSON
Assistant District Attorney
Arcadia, Louisiana

HOLLOWAY & BAKER

BY:
WILLIAM H. BAKER
Special Counsel
Jonesboro, Louisiana

O R D E R

Considering the above and foregoing Motion and upon examining the reasons therefor:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Jackson Parish School Board, Dr. A. A. Meredith and J. D. Koonce are hereby granted an extension of twenty (20) days before the filing of a desegregation plan in accordance with the Orders of this Court on July 22, 1965.

Thus done and signed in Shreveport on this the 27th day of August, 1965.

Ben C. Dawkins
HONORABLE BEN C. DAWKINS
Judge of U. S. District Court for
the Western District of Louisiana

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

YVORNIA DECAROL BANKS, by her parent and next friend, EMERSON BANKS, JERRY LEE WAFER, by his parent and next friend, GEORGE DODD, and all others similarly situated, Plaintiffs, vs. CLAIBORNE PARISH SCHOOL BOARD, a corporation, HARRY McKENZIE, JR., President of the Claiborne Parish School Board, and F. C. HALEY, Superintendent of Schools of Claiborne Parish, Defendants.	)	CIVIL ACTION NO. 11304

ANSWER

1. The allegations of Paragraph 1 of the complaint are admitted.

2. Respondents deny the right of plaintiffs to a temporary restraining order but admit that such respondents are operating a racially segregated school system in Claiborne Parish, Louisiana.

3. Respondents admit that plaintiffs are bona fide residents of Claiborne Parish, Louisiana, but deny their right to sue or seek relief as a member of a class.

4. Respondents admit that plaintiffs are Negro citizens of Claiborne Parish, Louisiana.

5. The allegations of Paragraph 5 do not require an answer.

6. Respondents admit that they are pursuing a policy of operating the public school system in Claiborne Parish on a racially segregated basis, but deny all other representations of said allegation.

7. The allegations of Paragraph 7 of the complaint are denied.

8. Allegation No. 8 of plaintiffs' complaint is a statement of law which respondents are not required to answer.

9. Respondents admit that the public schools of Claiborne Parish will re-open on Monday, August 30, 1965, but deny the remainder of said allegation.

WHEREFORE, respondents respectfully pray that this matter be heard in due course and that after hearing the complaint be dismissed.

Respectfully submitted,

JACK P. F. GREMILLION
ATTORNEY GENERAL OF LOUISIANA

HARRY J. KRON, JR.
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR RESPONDENTS,
CLAIBORNE PARISH SCHOOL BOARD,
HARRY McKENZIE, JR., IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE CLAIBORNE
PARISH SCHOOL BOARD, AND F. C. HALEY,
IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF SCHOOLS OF CLAIBORNE PARISH.

CERTIFICATE OF SERVICE

I, the undersigned counsel for respondents in this matter, do hereby certify that service of this answer has been made upon Robert F. Collins, 2211 Dryades Street, New Orleans, Louisiana, by placing a copy of said answer in the United States mails at the foregoing address this 26th day of August, 1965.

HARRY J. KRON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

YVORNIA DECAROL BANKS, MIKE KENSEY BANKS, and LAVORN BANKS, by their parent and next friend, GRANT K. BANKS; JERRY LEE WAFER, TOMMY LEE WAFER, and BETTY JEAN WILLIS, by their parent and next friend, GEORGE DODD, and all others similarly situated,

Plaintiffs

vs.

CLAIBORNE PARISH SCHOOL BOARD, a corporation, HARRY McKenzie, Jr., President of the Claiborne Parish School Board, and F.C. HALEY, Superintendent of Schools of Claiborne Parish,

Defendants.

CIVIL ACTION
NO. 11304

ORDER TO SHOW CAUSE

IT IS ORDERED that defendants, Claiborne Parish School Board, Harry McKenzie, Jr., President of the Claiborne Parish School Board, F.C. Haley, Superintendent of Schools of Claiborne Parish, show cause on __________________, the ____ day of _________ 1965 at _______ o'clock ______ M. why the preliminary injunction herein prayed for should not immediately issue.

IT IS FURTHER ORDERED that copies of this order to show cause be served upon all parties hereto immediately, and according to law.

SHREVEPORT, LOUISIANA, ____________, 1965.

____
UNITED STATES JUDGE

10-28-65

XERO COPY XERO COPY XERO COPY XERO COPY

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARET M. JOHNSON,
LONNIE E. JOHNSON
GLENDA G. JOHNSON, and
KENNETH L. JOHNSON, by their
father and next friend
ARMEY JOHNSON, and CALVIN
LEE MARA THOMAS, by his father
and next friend, SANDERS THOMAS,
and all Negro students and parents
situated,

PLAINTIFFS

vs.

CIVIL ACTION
NO. 11,130

JACKSON PARISH SCHOOL BOARD,
a Corporation, and Dr. A.A.
MEREDITH, President and J.D.
KOONCE, Superintendent, Jonesboro,
Louisiana,

DEFENDANTS.

* *

NOTICE OF APPEAL

Notice is hereby given that the plaintiffs in the above-entitled cause, appeal to the United States Court of Appeals for the Fifth Circuit from those parts of the judgement of this Court on October 5, 1965, that provided for methods of transfer, that provided for pupil assignment on the basis of choice, and from those parts that ignored plaintiffs' objections to the proposed plan of desegregation.

Plaintiffs also appeal from the denial of costs and attorneys' fees.

October 28, 1965.

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY:____________________

OF COUNSEL:
HARRIS DAVID, ESQ.
932 ROYAL STREET
NEW ORLEANS, LOUISIANA

CARL RACHLIN, ESQ.
38 PARK ROW
NEW YORK, NEW YORK

ALVIN J. BRONSTEIN, ESQ.
603 NORTH FARISH STREET
JACKSON, MISSISSIPPI

CERTIFICATE OF SERVICE

I, hereby certify that copies of the Notice of Appeal were served on opposing counsel by depositing them, postage prepaid in the United States Mail addressed to Hal R. Henderson, Assistant District Attorney, Second Judicial District, Jackson Parish, Louisiana, William H. Baker, Holloway and Baker, Jonesboro, Louisiana, Fred L. Jackson, District Attorney, Homer, Louisiana

ROBERT F. COLLINS

OCTOBER 28, 1965

10-27-65

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

YVORNIA DECAROL BANKS, MIKE
KENSEY BANKS, and LAVORN BANKS,
by their parent and next friend,
Grant K. Banks;
JERRY LEE WAFER, TOMMY LEE WAFER,
and BETTY JEAN WILLIS, by their
parent and next friend,
George Dodd; and All Others
Similarly Situated

CIVIL ACTION NO. 11304

vs.

CLAIBORNE PARISH SCHOOL BOARD;
HARRY McKENZIE, JR., President
of the Claiborne Parish School
Board; and F.C. Haley
Superintendent of Schools of
Claiborne Parish

* *

NOTICE OF APPEAL

Notice is hereby given that the plaintiffs in the above-entitled cause appeal to the United States Court of Appeals for the Fifth Circuit from those parts of the judgement of this Court on October 11, 1965, that provides for pupil transfers, that provides for assignments on the basis of choice, and from those parts which ignored plaintiffs' objections to the proposed plan of desegregation.

Plaintiffs also appeal the denial of costs and attorneys' fees.

October 27, 1965

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: Robert F. Collins

OF COUNSEL:

CARL RACHLIN, ESQ.
38 PARK ROW
NEW YORK, NEW YORK

ALVIN J. BRONSTEIN, ESQ.
603 NORTH FARISH STREET
JACKSON, MISSISSIPPI

HARRIS DAVID
932 ROYAL STREET
NEW ORLEANS, LOUISIANA

CERTIFICATE OF SERVICE

I, hereby certify that copies of the Notice of Appeal were served on opposing counsel by depositing them, postage prepaid in the United States Mail addressed to Jack Gremillion, Attorney General, Supreme Court Building, New Orleans, Louisiana, Harry J. Kron, Jr. Assistant Attorney General, State Capitol, Baton Rouge, Louisiana.

October 28, 1963.

ROBERT F. COLLINS

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

BANKS, et al.,

Plaintiffs-Appellants,

vs.

CLAIBORNE PARISH SCHOOL BOARD, et al.,

Defendants-Appellees

CIVIL ACTION
No. 11304

CONTENTS OF THE DESIGNATION OF THE RECORD ON APPEAL

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, plaintiffs-appellants designate the entire record herein as the record on appeal.

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: ______________________
Attorneys for Plaintiffs-Appellants

Of Counsel:

CARL RACHLIN, ESQ.
38 PARK ROW
NEW YORK 38, NEW YORK

ALVIN BRONSTEIN, ESQ.
603 NORTH FARISH STREET
JACKSON, MISSISSIPPI

HARRIS DAVID, ESQ.
932 ROYAL STREET
NEW ORLEANS, LOUISIANA

October ___________, 1965

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Designation has been served on defendants-appellees by placing copies thereof in the United States Mail, with sufficient postage attached thereto, addressed to the attorneys for the defendants-appellees at the addresses indicated in Answer.

____
NILS R. DOUGLAS, ESQ.
COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

October _______, 1965

6

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 23,192

YVORNIA DECAROL BANKS, ET AL., Appellants,	)
v.	)
CLAIBORNE PARISH SCHOOL BOARD, ET AL., Appellees.	)

MOTION FOR LEAVE TO INTERVENE AS OF RIGHT AS AN APPELLANT

The United States moves this Court for leave to intervene as of right as an appellant in this action.

1. The present action seeks relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution on account of race or color, that is, it seeks the desegregation, "with all deliberate speed," of the public elementary and secondary school system of Claiborne Parish, Louisiana. The pending appeal involves the adequacy of a court-ordered desegregation plan under the

standards enunciated by this Court, the mandate of the Supreme Court of the United States and the equal protection clause of the Fourteenth Amendment.

2. The desegregation plan involved here is substantially identical to the court-ordered plans involved in three other appeals currently pending in this Court. In two of these appeals, the United States is Appellant. United States v. Bossier Parish School Board, No. 22,863; United States v. Caddo Parish School Board, No. 23,274. In the third, the United States has this day filed a motion to intervene as an Appellant. Johnson v. Jackson Parish School Board, No. 23,173. The United States challenges the validity of all four plans on similar grounds and urges similar relief in each case.

3. Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h-2) authorizes the Attorney General, for and in the name of the United States, to intervene, on timely application, in any action commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution, on account of race, color, religion, or national origin, if the Attorney General certifies that the case is of general public importance. See Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (C.A. 5, 1965).

4. The certificate of the Attorney General that this case is of general public importance is attached hereto.

WHEREFORE, it is respectfully requested that the Court grant to the United States leave to intervene as of right in the instant case and thereafter to participate in the case as a party.

NICHOLAS deB. KATZENBACH
Attorney General

JOHN DOAR
Assistant Attorney General

DAVID L. NORMAN
Attorney, Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 1966, I served a copy of the foregoing Motion for Leave to Intervene as of Right as an Appellant upon the attorneys for Appellants and Appellees by mailing a copy to each of them as follows:

Collins, Douglas & Elie
2211 Dyrades Street
New Orleans, Louisiana

Attention: Nils R. Douglas, Esq.

Harris David, Esq.
932 Royal Street
New Orleans, Louisiana

Alvin J. Bronstein, Esq.
603 North Farish Street
Jackson, Mississippi

Haskell A. Kassler, Esq.
One State Street
Boston, Massachusetts

Carl Rachlin, Esq.
38 Park Row
New York, New York

Attorneys for Appellants

Hon. Jack P. F. Gremillion
Attorney General
State Capitol Building
Baton Rouge, Louisiana

Harry Kron, Esq.
State Capitol Building
Baton Rouge, Louisiana

Honorable Fred L. Jackson
District Attorney
Second Judicial District
Homer, Louisiana

Attorneys for Appellees

David L. Norman

DAVID L. NORMAN
Attorney,
Department of Justice
Washington, D. C. 20530

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 23,192

YVORNIA DECAROL BANKS, ET AL.,)
)
Appellants,)
)
v.)
)
CLAIBORNE PARISH SCHOOL BOARD,)
ET AL.,)
)
Appellees.)

CERTIFICATE OF GENERAL PUBLIC IMPORTANCE

Pursuant to section 902 of Title IX of the Civil Rights Act of 1964, 78 Stat. 266, I hereby certify that this case is of general public importance.

NICHOLAS deB. KATZENBACH
Attorney General of the
United States

(745,743,744,
749,750,751,752)

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 23345

UNITED STATES OF AMERICA and
LINDA STOUT, by her father and
next friend, BLEVIN STOUT,

Appellants,

v.

JEFFERSON COUNTY BOARD OF
EDUCATION, ET AL,

Appellees.

NO. 23331

UNITED STATES OF AMERICA,

Appellant,

v.

THE BOARD OF EDUCATION OF
THE CITY OF FAIRFIELD, ET AL,

Appellees.

NO. 23335

UNITED STATES OF AMERICA,

Appellant,

v.

THE BOARD OF EDUCATION OF THE
CITY OF BESSEMER, ET AL,

Appellees.

Appeals from the United States District Court for the Northern
District of Alabama.

NO. 23274

UNITED STATES OF AMERICA,

Appellant,

v.

CADDO PARISH SCHOOL BOARD,
ET AL,

Appellees.

NO. 23365

UNITED STATES OF AMERICA,

Appellant,

v.

THE BOSSIER PARISH SCHOOL
BOARD, ET AL,

Appellees.

NO. 23173

MARGARET M. JOHNSON, ET AL,

Appellants,
v.

JACKSON PARISH SCHOOL BOARD,
ET AL,
Appellees.

NO. 23192

YVORNIA DECAROL BANKS, ET AL,
Appellants,
v.

CLAIBORNE PARISH SCHOOL BOARD, ET AL,
Appellees.

Appeals from the United States District Court for the
Western District of Louisiana.

DEC 29 1966

Before WISDOM and THORNBERRY, Circuit Judges, and COX,[*] District Judge.

WISDOM, Circuit Judge:

Once again the Court is called upon to review school desegregation plans to determine whether the plans meet constitutional standards. The distinctive feature of these cases, consolidated on appeal, is that they require us to reexamine school desegregation standards in the light of the Civil Rights Act of 1964 and the Guidelines of the United States Office of Education, Department of Health, Education, and Welfare (HEW).

When the United States Supreme Court in 1954 decided Brown v. Board of Education[1] the members of the High School Class of 1966 ~~xxxx~~ had not entered / ~~xxx~~ the first grade. Brown I held that separate schools for Negro children were "inherently unequal".[2] Negro children, said the Court, have the "personal and present" right to equal educational opportunities with white children in a racially nondiscriminatory public school system. For all but a handful of Negro members of the High School Class of '66 this right has been "of such stuff as dreams are made on".[3]

"The Brown case is misread and misapplied when it is construed simply to confer upon Negro pupils the right to be considered for admission to a white school".[4] The United States Constitution, as construed in Brown, requires public school systems to integrate students, faculties, facilities, and activities.[5] If Brown I left any doubt as to the affirmative duty of states to furnish a fully integrated education to Negroes as a class, Brown II resolved that doubt. A state with a dual attendance system, one for whites and one for Negroes, must "effectuate a transition to a [single] racially nondiscriminatory system."[6] The two Brown decisions established equalization of educational opportunities as a high priority goal for all of the states and compelled seventeen states, which by law had segregated public schools, to take affirmative action to reorganize their schools into a unitary, nonracial system.

---

[*] William Harold Cox, U. S. District Judge for the Southern District of Mississippi, sitting by designation.

The only school desegregation plan that meets constitutional standards is one that works. By helping public schools to meet that test, by assisting the courts in their independent evaluation of school desegregation plans, and by accelerating the progress but simplifying the process of desegregation the HEW Guidelines offer new hope to Negro school children long denied their constitutional rights. ~~This is the hope that a~~ A national effort, bringing together Congress, the executive, and the judiciary will succeed where the courts, acting alone, have failed in making may make meaningful the right of Negro children to equal educational opportunities. The Courts acting alone have failed.

We hold, again, in determining whether school desegregation plans meet the standards of Brown and other decisions of the Supreme Court,[7/] that courts in this circuit should give "great weight" to HEW Guidelines.[8/] Such deference is consistent with the exercise of traditional judicial powers and functions. HEW Guidelines are based on decisions of this and other courts, are formulated to stay within the scope of the Civil Rights Act of 1964, are prepared in detail by experts in education and school administration, and are intended by Congress and the executive to be part of a coordinated national program. These Guidelines present the best system available for uniform application, the best aid to the courts in evaluating the validity of a school desegregation plan and the progress made under that plan.

HEW regulations provide that schools applying for financial assistance must comply with certain requirements. However, the requirements for elementary or secondary schools "shall be deemed to be satisfied if such school or school system is subject to a final order of a court of the United States for the desegregation of such school or school system . . . ."[9/] This regulation causes our decisions to have a two-fold impact on school desegregation. Our decisions determine not only (1) the standards schools must comply with under Brown but also (2) the standards these schools must comply with to qualify for federal financial assistance. Schools therefore automatically qualify for federal aid whenever a final court order desegregating the school has been entered in the litigation and the school authorities agree to comply with the order. Because of the second consequence of our decisions and because of our duty to cooperate with Congress and with the executive in enforcing Congressional objectives, strong policy considerations support our holding that the standards of court-supervised desegregation should not be lower than the standards of HEW-supervised segregation. The Guidelines, of course, cannot bind the courts; we are not abdicating any judicial responsibilities.[10] But we hold that HEW's standards are substantially the same as this Court's standards. They are required by the Constitution and, as we construe them, are within the scope of the Civil Rights Act of 1964. In evaluating desegregation plans, district courts should make few exceptions to the Guidelines and should carefully tailor those so as not to defeat the policies of HEW or the holding of this Court.

Case by case over the last twelve years, courts have increased their understanding of the desegregation process.[11] Less and less have courts accepted the question-begging distinction between "desegregation" and "integration" as a sanctuary for school boards fleeing from their constitutional duty to ~~provide~~ establish an integrated, non-racial school system.[12] ~~In the light of the Court's expanded~~ With the benefit of this experience and because of the importance of the instant cases,[13] the Court has restudied the School Segregation Cases. We have reexamined the nature of the Negro's right to equal educational opportunities and the extent of the correlative affirmative duty of the state to furnish equal educational opportunities. We have taken a close look at the background and objectives of the Civil Rights Act of 1964.

* * *

We approach decision-making here with humility. Many intelligent men of good will who have dedicated their lives to public education are deeply concerned for fear that a doctrinaire approach to desegregating schools may lower educational standards or even destroy public schools in some areas. These educators and school administrators may fail to understand all of the legal implications of Brown, but they understand the grim realities of the problems that complicate their task.

The Court is not unaware of the gravity of their problems, especially in rural counties where there has not been even token desegregation. (1) Some determined opponents of desegregation would scuttle public education rather than send their children to schools with Negro children. These men flee to the suburbs, reinforcing urban neighborhood school patterns. (2) Private schools, aided by state grants, have mushroomed in some states in this circuit.[14] The flight of white children to these new schools and to established private and parochial schools promotes resegregation. (3) Many white teachers prefer not to teach in Negro schools. They are tempted to seek employment at white schools or to retire. (4) Many Negro children, for various reasons, prefer to finish school where they started. (5) The gap between white and Negro scholastic achievements causes all sorts of difficulties. There is no consolation in the fact that the gap depends on the socio-economic status of Negroes at least as much as it depends on inferior Negro schools.

No court can have a confident solution for a legal problem so closely interwoven with ~~legal,~~ political, social, and moral threads as the problem of establishing fair, workable standards for undoing de jure school segregation in the South. The Civil Rights Act of 1964 and the HEW Guidelines are belated but invaluable helps in arriving at a neutral, principled decision consistent with the dimensions of the problem, traditional judicial functions, and the United States Constitution. We grasp the nettle.

I.

"No army is stronger than an idea whose time has come."[15]
Ten years after Brown, came the Civil Rights Act of

1964.[16] Congress decided that the time had come for a sweeping civil rights advance, including national legislation to speed up desegregation of public schools and to put teeth into enforcement of desegregation.[17] Titles IV and VI together constitute the congressional alternative to court-supervised desegregation. These sections of the law mobilize in aid of desegregation the United States Office of Education and the Nation's purse.

A. Title IV authorizes the Office of Education to give technical and financial assistance to local school systems in the process of desegregation.[18] Title VI requires all federal agencies administering any grant-in-aid program to see to it that there is no racial discrimination by any school or other recipient of federal financial aid.[19] School boards cannot, however, by giving up federal aid, avoid the policy that produced federal aid to schools; Title IV authorizes the Attorney General to sue, in the name of the United States, to desegregate a public school or school system.[20] More clearly and effectively ~~then~~ than either of the other two coordinate branches of Government, Congress speaks as the Voice of the Nation. *The national policy is plain: formerly de jure segregated public school systems based on dual attendance zones must shift to a unitary, nonracial system -- with or without federal funds.*

The Chief Executive acted promptly to carry into effect the Chief Legislature's mandate. President Lyndon B. Johnson signed the bill into law July 2, 1964, only a few hours after Congress had finally approved it. In the signing ceremony broadcast to the Nation, the President said: "We believe all men are entitled to the blessings of liberty, yet millions are being deprived of those blessings -- not because of their own failures, but because of the color of their skins. . . . [It] cannot continue."[21] At the request of President Johnson, Vice President Hubert H. Humphrey submitted a report to the President "On the Coordination of Civil Rights Activities in the Federal Government" recommending the creation of a Council on Equal Opportunity. The report concludes that "the very breadth of the Federal Government's effort, involving a multiplicity of programs" necessary to carry out the 1964 Act had created a "problem of coordination." The President approved the recommendation that instead of creating a new agency there be a general coordination of effort.[22] Later, the President noted that the federal departments and agencies had "adopted uniform and consistent regulations implementing Title VI . . . [in] a coordinated program of enforcement." He directed the Attorney General to "coordinate" the various federal programs in the adoption of "consistent and uniform policies, practices and procedures with respect to the enforcement of Title VI. . . ."[23]

In April 1965 Congress for the first time in its history adopted a law providing general federal aid - a billion dollars a year - for elementary and secondary schools.[24] ~~The first year cost of the bill was modestly estimated at 1.3 billion dollars~~ It is a fair assumption that Congress would not have taken this step had Title VI not established the principle that schools receiving federal assistance must meet uniform national standards for desegregation.[25]

To make Title VI effective, the Department of Health, Education, and Welfare (HEW) adopted the regulation, "Non-discrimination in Federally assisted Programs."[26] This regulation directs the Commissioner of Education to approve applications for financial assistance to public schools only if the school or school system agrees to comply with a court order, if any, outstanding against it, or submits a ~~satisfactory~~ desegregation plan satisfactory to the Commissioner.[27]

To make the regulation effective, by assisting the Office of Education in determining whether a school qualifies for federal financial aid and by informing school boards of HEW requirements, HEW formulated certain standards or guidelines. In April 1965, nearly a year after the Act was signed, HEW published its first Guidelines, "General Statement of Policies under Title VI of the Civil Rights Act of 1964 respecting Desegregation of Elementary and Secondary Schools."[28] These Guidelines fixed the fall of 1967 as the target date for total desegregation of all grades. ~~students, faculty, facilities and activities~~ In March 1966 HEW issued "Revised Guidelines" to correct most of the major flaws revealed in the first year of operation under Title VI.[29]

B. The HEW Guidelines raise the question: To what extent should a court, in determining whether to approve a school desegregation plan, give weight to the HEW Guidelines? We adhere to the answer this Court gave in four earlier cases. The HEW Guidelines are "minimum standards", representing for the most part standards the Supreme Court and this Court established before the Guidelines were promulgated.[30] Again we hold, "we attach great weight" to the Guidelines. Singleton v. Jackson Municipal Separate School District, 5 Cir. 1965, 348 F.2d 729 (Singleton I). "We put these standards to work. . . . [Plans] should be modeled after the Commissioner of Education's requirements. . . .[Exceptions to the guidelines should be] confined to those rare cases presenting justiciable, not operational, questions. . . . The applicable standard is essentially the HEW formulae." Price v. Denison Independent School District Board of Education, 5 Cir. 1965, 348 F.2d 1010. "We consider it to be in the best interest of all concerned that School Boards meet the minimum standards of the Office of Education. . . In certain school districts and in certain respects, HEW standards may be too low to meet the requirements established by the Supreme Court and by this Court. . . . [But we also] consider it important to make clear that . . . we do not abdicate our judicial responsibility for determining whether a school desegregation plan violates federally guaranteed rights." Singleton v. Jackson Municipal Separate School District, 5 Cir. 1966, 355 F.2d 815 (*Singleton II*). In Davis v. Board of School Commissioners of Mobile County, 5 Cir. 1966, 364 F.2d 896 , the most recent school case before this Court, we approved *Singleton I* and *II* and Price v. Denison and ordered certain changes in the school plan in conformity with the HEW Guidelines.

Courts in other circuits ~~which have considered the problem~~ are in substantial agreement with this Court. In Kemp v. Beasley, 8 Cir. 1965, 352 F. 2d 14, 18-19, the Court said: "The court agrees that these [HEW] standards must be *heavily relied upon* . . . [T]he courts should endeavor to model their standards after those promulgated by the executive. They are not bound, however, and when circumstances dictate, the courts may require something more, less or different from the H.E.W. guidelines." (Emphasis added.) Concurring, Judge Larson observed: "However, that 'something different' should rarely, if ever be less than what is contemplated by the H.E.W. standards." 352 F.2d at 23 . Smith v. Board of Education of Morrilton, 8 Cir. 1966,365 F.2d 770 reaffirms that the Guidelines "are entitled to serious judicial deference".

Although the Court of Appeals for the Fourth Circuit has not yet considered the effect of the HEW standards, district courts in that circuit have relied on the guidelines. See Kier v. County School Board of Augusta County, W.D.Va. 1966, 249 F. Supp. 239; Wright v. County School Board of Greenville County, Civil Action, E.D.Va. 1966, 252 F. Supp. 378; Miller v. Clarendon County School District No. 2, Civil Action No. 8752, April 21, 1966, D. of S. C. In Miller, one of the most recent of these cases, the court said:

> The orderly progress of desegregation is best served if school systems desegregating under court order are required to meet the minimum standards promulgated for systems that desegregate voluntarily. Without directing absolute adherence to the "Revised Standards" guidelines at this juncture, this court will welcome their inclusion in any new, amended, or substitute plan which may be adopted and submitted.

In this circuit, the school problem arises from state action. This Court has not had to deal with nonracially motivated de facto segregation, that is, racial imbalance resulting fortuitously in a school system based on a single neighborhood school serving all white and Negro children in a certain attendance area or neighborhood. For this circuit, the HEW Guidelines offer, for the first time, the prospect that the transition from a de jure segregated dual system to a unitary integrated system may be carried out effectively, promptly, and in an orderly manner. See Appendix B, Rate of Change and Status of Desegregation.

II.

We read Title VI as a congressional mandate for change -- change in pace and method of enforcing desegregation. The 1964 Act does not disavow court-supervised desegregation. On the contrary, Congress recognized that to the courts belongs the last word in any case or controversy.[31] But Congress was dissatisfied with the slow progress inherent in the judicial adversary process.[32] Congress therefore fashioned a new method of enforcement to be administered not on a case by case basis as in the courts but, generally, by federal agencies operating on a national scale and having a special competence in education and administration. Congress looked to these agencies to shoulder the additional enforcement burdens resulting from the shift to high gear in school desegregation.

A. Congress was well aware that it was time for a change. In the decade following Brown court-supervised desegregation made qualitative progress: Responsible Southern leaders accepted desegregation as a settled constitutional principle.[33] ~~But~~ Quantitively, the results were meagre. The statistics speak eloquently. See Appendix B, Rate of Change and Status of Desegregation. In 1965 the public school districts in the consolidated cases now before this Court had a school population of 155,782 school children, 59,361 of whom were Negro. Yet under the existing court-approved desegregation plans, only 110 Negro children in these districts, 0.19 per cent of the school population, attend former "white" schools.[34] In 1965 there was no faculty desegregation in any of these school districts; indeed, none of the 30,500 Negro teachers in Alabama, Louisiana, and Mississippi served with any of the 65,400 white teachers in those states.[35] In the 1963-64 school year, the eleven states of the Confederacy had 1.17 per cent of their Negro students in schools with white students.[36] In 1964-65, undoubtedly because of the effect of the 1964 Act, the percentage doubled, reaching 2.25. For the 1965-66 school year, this time because of HEW Guidelines, the percentage reached 6.01 per cent. In 1965-66 the entire region encompassing the Southern and border states had 10.9 per cent of their Negro children in school with white children; 1,555 biracial school districts out of 3,031 in the Southern and border states were still fully segregated; 3,101,043 Negro children in the region attended all-Negro schools. But the states of Alabama, Louisiana, and Mississippi, still had less than one per cent of their Negro enrollment attending schools with white students.[37]

The dead hand of the old past and the closed fist of the recent past account for some of the slow progress. There are other reasons -- as obvious to Congress as to courts. (1) Local loyalties compelled school authorities, ~~and public~~ elected officials, ~~and some district judges~~ /to make a public record of unwillingness to act. ~~short of a court order~~ But even school authorities willing to act have moved slowly because of uncertainty as to the scope of their duty to act affirmatively. This is attributable to (a) a misplaced reliance on the *Briggs* dictum that the Constitution "does not require integration",[38] (b) a misunderstanding of the *Brown II* mandate, desegregate with "due deliberate speed",[39] and (c) a mistaken notion that transfers under the Pupil Placement Laws satisfy desegregation requirements.[40] (2) Case by case development of the law is a poor sort of medium for reasonably prompt and uniform desegregation. There are natural limits to effective legal action. Courts cannot give advisory opinions, and the disciplined exercise of the judicial function properly makes courts reluctant to move forward in an area of the law bordering the periphery of the judicial domain. (3) The contempt power is ill-suited to serve as the chief means of enforcing desegregation. Judges naturally shrink from using it against citizens willing to accept the thankless, painful responsiblity of serving on a school board.[41] (4) School desegregation plans are often woefully inadequate; they rarely provide necessary detailed instructions and specific answers to administrative problems.[42] And most judges do not have sufficient competence - they are not educators or school administrators - to know the right questions, much less the right answers. (5) But one reason more than any other has held back desegregation of public schools on a large scale. This has been the lack, until 1964, of effective Congressional statutory recognition of school desegregation as the law of the land.[43] ¶ "Considerable progress has been made . . . Nevertheless, in the last decade it has become increasingly clear that progress has been too slow and that national legislation is required to meet a national need which becomes ever more obvious."[44] Title VI of the Civil Rights Act of 1964, therefore, was not only appropriate and proper legislation under the Thirteenth and Fourteenth Amendments; it was necessary to rescue school desegregation from the bog in which it had been trapped for ten years.[45]

The Civil Rights Commission, doubtless better able than any other authority to understand the significance of the Civil Rights Act of 1964, had this to say about Title VI:

> "This statute heralded a new era in school desegregation . . . ~~General was given statutory authority to intervene~~ Most significantly . . . Federal power was to be brought to bear in a manner which promised speedier and more substantial desegregation than had been achieved through the voluntary efforts of school boards and district-by-district litigation. . . . During fiscal year 1964, $176,546,992 was distributed to State and local school agencies in the 17 Southern and border States. The passage of the Elementary and Secondary Education Act of 1965 added an additional appropriation of $589,946,135 for allocation to the 17 Southern and border States for fiscal year 1966. With funds of such magnitude at stake, most school systems would be placed at a serious disadvantage by termination of Federal assistance."[46]

B. The Congressional mandate, as embodied in the Act and as carried out in the HEW Guidelines, does not conflict with the proper exercise of the judicial function or with the doctrine of separation of powers. It does however profoundly affect constructive use of the judicial function within the lawful scope of sound judicial discretion. When Congress declares national policy, the duty the two other coordinate branches owe to the Nation requires that, within the law, the judiciary and the executive respect and carry out that policy. Here the Chief Executive acted promptly to bring about uniform standards for desegregation. The judicial branch too should cooperate with Congress and the executive in making administrative agencies effective instruments for supervising and enforcing desegregation of public schools. Justice Harlan F. Stone expressed this well:

> "Legislatures create administrative agencies with the desire and expectation that they will perform efficiently the tasks committed to them. That, at least, is one of the contemplated social advantages to be weighed in resolving doubtful construction. Its aim is so obvious as to make unavoidable the conclusion that the function which courts are called upon to perform, in carrying into operation such administrative schemes, is constructive, not destructive, to make administrative agencies, whenever reasonably possible, effective instruments for law purposes, and not to destroy them."[47]

In an analogous situation involving enforcement of the Fair Labor Standards Act, the Supreme Court has said, "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." Skidmore v. Swift & Co., 1944, 323 U. S. 134, 65 S.Ct. 161 , 89 L.Ed. 124 . In an appeal from the district court's denial of an injunction to enforce labor standards under the Act this Court has pointed out:

> ". . . this proceeding is only superficially related to a suit in equity for an injunction to protect interests jeopardized in a private controversy. The public interest is jeopardized here. The injunctive processes are a means of effecting general compliance with national policy as expressed by Congress, a public policy judges too must carry out - actuated by the spirit of the law and not begrudgingly as if it were a newly imposed fiat of a presidium. . . . Implicit in the defendants' non-compliance, as we read the briefs and the record, is a certain underlying, not unnatural, Actonian distaste for national legislation affecting local activities. But the Fair Labor Standards Law has been on the books for twenty-three years. The Act establishes a policy for all of the country, and for the courts as well as for the agency required to administer the law. Mitchell v. Pidcock, 5 Cir. 1962, 299 F.2d 281, 287, 288.

C. We must therefore cooperate with Congress and the Executive in enforcing Title VI. The problem is: Are the HEW Guidelines a legitimate, authoritative expression of the congressional and executive policies embodied in the Civil Rights Act of ~~1966~~ 1964. We hold that they are.

The Guidelines do not purport to be a rule or regulation or order. They constitute a Statement of Policy under paragraph 80.4(c) of the HEW Regulations issued after the President approved the regulations December 3, 1964. HEW is under no statutory compulsion to issue such statements. It is, however, of manifest advantage to school boards throughout the country and to the general public to know the criteria the Commissioner uses in determining whether a school meets the requirements for eligibility to receive financial assistance.

The Guidelines have the vices ~~and virtues~~ of all administrative policies established unilaterally without a hearing. Because of these ~~views~~ Vices courts, as the school boards point out, have set limits on administrative regulations, rulings, policies, and practices: an agency construction of a statute cannot make the law; it must conform to the law and be reasonable. To some extent ~~its~~ the weight of administrative declarations depends on the place of such declarations in the heirarchy of agency pronouncements extending from regulations down to general counsel memoranda and inter-office decisions. See Manhattan General Electric Company v. Commissioner, 1936, 297 U. S. 129; 56 S.Ct. 397 , 80 L.Ed. 528; United States v. Bennett, 5 Cir. 1951, 186 F.2d 407; United States v. Mississippi Chemical Corporation, 5 Cir. 1964, 326 F.2d 569; Chattanooga Auto Club v. Commissioner, 6 Cir. 1950, 182 F.2d 551.

These and similar decisions are not inconsistent with the courts' giving great weight to the HEW's policy statements on enforcement of Title VI. In Skidmore v. Swift & Co., 323 U.S. 134, an action was commenced in a federal district court by employees of Swift & Co. to recover wages at the overtime rates prescribed by the Fair Labor Standards Act (52 Stat. 1060, et seq.) for certain services which they had performed. At issue was whether these services constituted "employment" within the meaning of section 7 (a) of that act. The district court and this Court, on appeal, decided this issue against the plaintiffs. The Supreme Court reversed. After acknowledging (323 U.S. at 137) that the statute had granted no rule-making power to the Wage and Hour Administrator with respect to the issue at hand ("[i]nstead, it put this responsibility on the courts"), the Court referred to an "interpretative Bulletin" which had been issued by the Administrator, and which contained his interpretation of the statutory phrase in question. The Supreme Court said:

> "We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 48/

The Supreme Court found that the lower courts had misunderstood their function vis-a-vis the Interpretative Bulletin and remanded the case. See also, United States v. American Trucking Association, 1940, 310 U. S. 534, 549; Goldbery v. Servas, 1 Cir. 1961, 294 F.2d 841, 847.

The national importance of the HEW Guidelines, the evident thoroughness with which these standards were prepared and formulated by educational authorities, the similarity of the HEW standards to the standards this Court and the Supreme Court have established, and the manifest effort of the Office of Education to be faithful to the congressional/~~mandate~~ objectives of the 1964 Civil Rights Act entitle the HEW Guidelines to ~~be accorded~~ greater weight by the courts than run-of-the-mine policy statements low in the hierarchy of administrative declarations.

Courts therefore should cooperate with the congressional-executive policy in favor of desegregation and against aiding segregated schools. See Section IIIA of this opinion.

D. Because our approval of a plan establishes eligibility for federal aid, ~~cooperation means that judicial~~/our standards should not be lower than those of HEW. Unless judicial standards are substantially in accord with ~~or more demanding than~~ the Guidelines, school boards previously resistant to desegregation will resort to the courts to avoid complying with the minimum standards HEW promulgates for schools that desegregate voluntarily. As we said in Singleton I:

> "If in some district courts judicial guides for approval of a school desegregation plan are more acceptable to the community or substantially less burdensome than H.E.W. guides, school boards may turn to the federal courts as a means of circumventing the H.E.W. requirements for financial aid. Instead of a uniform policy relatively easy to administer, both the courts and the Office of Education would have to struggle with individual school systems on ad hoc basis. If judicial standards are lower, recalcitrant school boards in effect will receive a premium for recalcitrance; the more the intransigence, the bigger the bonus." 348 F.2d at 731.

In Kemp v. Beasley, 8 Cir. 1965, 352 F.2d 14, the Court concluded:

> "[HEW] standards must be heavily relied upon. . . . Therefore, to the end of promoting a degree of uniformity and discouraging reluctant school boards from reaping a benefit from their reluctance the courts should endeavor to model their standards after those promulgated by the executive." 352 F.2d at 18,19.

Concurring, Judge Larson, speaking from his experience as a district judge, pointed out that school boards which do not act voluntarily retard the desegregation process to the disadvantage of the individual's constitutional rights: "Judicial criteria", therefore, "should probably be more stringent" than HEW Guidelines:

> "A school board which fails to act voluntarily forces Negro students to solicit aid from the courts. This not only shifts the burden of initiating desegregation, but inevitably means delay in taking the first step. As Judge Gibson observes, we are not here concerned with regulating the flow of Federal funds. Our task is to safeguard basic constitutional rights. Thus, our standards should be directed toward full, complete, and final realization of those rights." 352 F.2d at 23.

The announcement in HEW regulations that the Commissioner would accept a final school desegregation order as proof of the school's eligibility for federal aid prompted a number of schools to seek refuge in the federal courts. Many of these had not moved an inch toward desegregation.[49] In Louisiana alone twenty school boards obtained quick decrees providing for desegregation according to plans greatly at variance ~~rate far slower than the rate~~ with ~~required in~~ the Guidelines.[50]

We shall not permit ~~federal~~ the courts to be used to destroy or dilute the effectiveness of the congressional policy expressed in Title VI. There is no bonus for foot-dragging.

E. The experience this Court has had in the last ten years argues strongly for uniform standards in court-supervised desegregation.

The first school case to reach this Court after Brown v. Board of Education was Brown v. Rippey, 5 Cir. 1956, 237 F.2d 796. Since then we have reviewed 41 other school cases, many more than once.[51] The district courts in this circuit have considered 128 school cases in the same period. Reviewing these cases imposes a taxing, time-consuming burden on the courts not reflected in statistics. An analysis of the cases shows a wide lack of uniformity in areas where there is no good reason for variations in the schedule and manner of desegregation.[52] In some cases there has been a substantial time-lag between this Court's opinions and their application by the district courts.[53] In certain cases - which we consider unnecessary to cite - there has even been a manifest variance between this Court's decision and a later district court decision. A number of district courts still mistakenly assume that transfers under Pupil Placement Laws - superimposed on unconstitutional initial assignment - satisfy the requirements of a desegregation plan. The lack of clear and uniform standards to govern school boards has tended to put a premium on delaying actions.

~~defended on the ground of alleged local characteristics of the particular area.~~ In sum, the lack of uniform standards has retarded the development of local responsibility for the administration of schools without regard to race or color. What was true of an earlier Athens and an earlier Rome is true today: in Georgia, for example, there should not be one law for Athens and another law for Rome.

Before HEW published its Guidelines, this Court had already established guidelines for school desegregation: to encourage uniformity at the district court level and to conserve judicial effort at both the district court and appellate levels. We did so by making detailed suggestions to the district courts. Lockett v. Board of Education of Muscogee County School District, 5 Cir. 1964, 342 F.2d 225; Bivens v. Board of Education for Bibb County, 5 Cir. 1965, 242 F.2d 229; Armstrong v. Board of Education of Birmingham, 5 Cir. 1964, 333 F.2d 47; Dan's v. Board of School Commissioners of Mobile, 5 Cir. 1964, 333 F.2d 53; Stell v. Savannah - Chatham County Board of Education, 5 Cir.1964, 333 F.2d 55; Gaines v. Dougherty County Board of Education, 5 Cir. 1964, 334 F.2d 983. In other areas of the law involving recurrent problems of regional or national interest, this Court has also found guidelines advantageous. ~~Thus~~ In United States v. Ward, 5 Cir. 1965, 347 F.2d 795 and United States v. Palmer, 5 Cir. 1966, 356 F.2d 951, suits to enjoin registrars of voters from discriminating against Negroes, we attached identical proposed decrees for the guidance of district courts.[54] See also

Scott v. Walker, 5 Cir. 1966, 358 F.2d 561 , one of a series of cases on the exclusion of Negroes from juries.

F. We summarize the Court's policy as one of encouraging the maximum legally permissible correlation between judicial standards for school desegregation and HEW Guidelines. This policy may be applied without federal courts' abdicating their proper judicial function. The policy complies with the Supreme Court's increasing emphasis on more speed and less deliberation in school desegregation.[55] It is consistent with the judiciary's duty to the Nation to cooperate with the two other coordinate branches of government in carrying out the national policy expressed in the Civil Rights Act of 1964.

III.

The defendants contend that the Guidelines require integration, not just desegregation; that school boards have no affirmative duty to integrate. They say that in this respect the Guidelines are contrary to the provisions of the Civil Rights Act of 1964 and to constitutional intent expressed in the Act. *This argument rests on nothing that the United States Supreme Court held or said in Brown or in any other case*. It rests on two glosses on *Brown*: the opinions in Briggs v. Elliott, E.D.S.C. 1955, 132 F. Supp. 776 and Bell v. School City of Gary, Indiana, N.D. Ind. 1963, 213 F. Supp. 819, aff'd 7 Cir. 1963, 324 F.2d 209. *Briggs*, decided only six weeks after *Brown II*, is one of the earliest cases in this field of law. The portion of the opinion most quoted is pure dictum. *Briggs* did not state the law as the Supreme Court stated it in *Brown* or as the law must be stated today in the light of Aaron v. Cooper, Rogers v. Paul, and Bradley v. School Board. These and other decisions compel a state in this circuit to take affirmative action to reorganize its school system by integrating the students, faculties, facilities, and activities. As for *Bell*, it is inapplicable to cases in this circuit, all of which involve formerly de jure segregated schools. Although the legislative history of the statute shows that the floor managers for the Act and other members of the Senate and House cited and quoted these two opinions they did so within the context of the problem of de facto segregation. A study of the Guidelines shows that, ~~in general~~, the HEW standards are within the rationale of *Brown* and the congressional objectives of the Act.

A. *Briggs*, an action to desegregate the public schools in Clarendon County, South Carolina, was one of the school cases consolidated with Brown v. Board of Education of Topeka, Kansas. On remand, a distinguished court (Parker and Dobie, Circuit Judges, and Timmerman, District Judge) felt that it was important to "point out exactly what the Supreme Court has decided and what is has not decided." The Court said:

> "It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. . . . *The Constitution, in other words, does not require integration. It merely forbids segregation.*" 132 F. Supp. at .

Ten years later Clarendon County schools were still totally segregated.[56] ¶ This Court and other courts, gratuitously for the most part, have often paraphrased or quoted with approval the *Briggs* dictum.[57] It is not surprising, therefore, that *Briggs* prompted Pupil Placement Laws, the most effective technique for perpetuating school segregation. And it is not surprising that school officials - the *Briggs* dictum dinned into their ears for a decade - have not now faced up to faculty integration. However, as this Court's experience in handling school cases increased, the Court became aware of the frustrating effects of *Briggs*. In *Singleton I* we referred to it as an "oversimplified" construction of the *Brown I*; in *Singleton II* "as inconsistent with the *Brown [II]* decision and the later development of decisional and statutory law in the area of civil rights." We added: "The Constitution forbids constitutional state action in the form of segregated facilities, included segregated public schools. School authorities therefore are under the constitutional compulsion of furnishing a single, integrated school system." Other federal courts have disapproved of the Briggs dictum.58/

The Briggs dictum may be explained as a facet of the Fourth Circuit's now abandoned view that Fourteenth Amendment rights are exclusively individual rights and in school cases are to be asserted individually after each plaintiff has exhausted state administrative remedies.59/ The Court disallowed class suits because Negro students who had not asked for transfers to white schools had not individually exhausted their remedies and were therefore not similarly situated with the plaintiffs. Thus in Carson v. Warlick, 4 Cir. 1956, 238 F.2d 724, Judge John Parker, for the Court, stated:

> "There is no question as to the right of these [Negro] school children. . . . They are to be admitted, however, as individuals, not as a class or group; and it is as individuals that their rights under the Constitution are asserted. . . . [The] school board must pass upon individual applications made individually to the board. . . . 238 F.2d at 729.

In Covington v. Edwards, 4 Cir. 1959, 264 F.2d 780, 783, the court commented that "the County board has taken no steps to put an end to the planned segregation", but still held for the board for failure of the plaintiffs to exhaust their remedies and for filing the suit as a class action. In a later opinion in this case, sub.nom. Jeffers v. Whitley, 309 F.2d 621, the Court found that the plaintiffs had failed to establish that they were "denied any constitutional right because of their race or color". The court observed,

> "It can fairly be said that what the children and their parents are still seeking is only a desegregation of the Conwell County School System rather than a protection of their own rights. . . ."

The Fourth Circuit abandoned this view in Green v. School Board of the City of Roanoke, 4 Cir. 1962, 304 F.2d 118, holding that since administrative remedies need not be exhausted, a class suit is proper. "[It] would be almost a cruel joke to say that administrative remedies must be exhausted when it is known that such exhaustion of remedies will not terminate the pattern of a racial assignment." Jackson v. School Board of City of Lynchburg, Va., W.D.Va. 1962, 201 F. Supp. 620. McNeese v. Board of Education, 1963, 373 U. S. 668, 83 S. Ct. 1433, 10 L.Ed.2d 622 put beyond debate the need to exhaust remedies and the right of Negro students to file a class action. See also Armstrong v. Board of Education of the City of Birmingham, 5 Cir. 1963, 323 F.2d 333, cert. den'd sub.nom. Gibson v. Harris, 376 U.S. 905 (1964).

In the sense that an individual pupil's right under the equal protection clause is a "personal and present" right not to be discriminated against by being segregated,[60] the dictum is a cliché. The Fourteenth Amendment provides, "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws". The dictum may also be defensible, if the Briggs court used the term "integration" to mean an absolute command at all costs that each and every Negro child attend a racially balanced school.[61] But what is wrong about the dictum is more important than what is right about it. What is wrong about Briggs is that it drains out of Brown that decision's significance as a class action to secure equal educational opportunities for Negroes by compelling the states to reorganize their public school systems.[62] All four of the original School Segregation cases were class actions and described as such in the opinions. 347 U. S. at 455.

We do not minimize the importance of the Fourteenth Amendment rights of an individual, but there was more at issue in Brown than the controversy between certain schools and certain children. Briggs overlooks the fact that Negroes ~~as a collectivity~~ collectively are harmed when the state, by law or custom, operates segregated schools or a school system with uncorrected effects of segregation.

Denial of access to the dominant culture, lack of opportunity in any meaningful way to participate in political and other public activities, the stigma of apartheid condemned in the Thirteenth Amendment are concomitants of the dual educational system. The unmalleable fact transcending in importance the harm to individual Negro children is that the separate school system was an integral element in the Southern State's general program to restrict Negroes as a class from participation in the life of the community, the affairs of the State, and the mainstream of American life: Negroes must keep their place.[63]

"[S]egregation is a group phenomenon. Although the effects of discrimination are felt by each member of the group, any discriminatory practice is directed against the group as a unit and against individuals only as their connection with the group involves the antigroup sanction. . . . [As] a group-wrong . . . the mode of redress must be group-wide to be adequate."[64] Adequate redress therefore calls for much more than allowing a few Negro children to attend formerly white schools; it calls for liquidation of the state's system of de jure school segregation and the organized undoing of the effects of past segregation. "Beyond [a child's] personal right [under the Fourteenth Amendment] however, or perhaps as an aspect of it, the lower federal courts seem to be recognizing a right in Negro school children, enforceable at least by a class action, to have the school system administered free of an enforced policy of segregation irrespective of whether any colored pupil has been denied admission to any particular school on the ground of his race."[65]

It is undoubtedly true that the intangible inadequacies of a segregated education harm the individual, but the Supreme Court treated these inadequacies as inherent attributes which prevail universally.[66] For example, the Court said:

> [Education] is the very foundation of good citizenship. Today it is a principal instrument in *awakening the child to cultural values*, in preparing him for later professional training, and in *helping him to adjust normally to his environment*. In these days, it is doubtful that any child may reasonably be expected to succeed if he is denied the opportunity of an education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms. 347 U.S. at 493 (Emphasis added.)

Again, in a critical passage:

> To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and mind in a way unlikely ever to be undone.347 U.S. at 494.

With this predicate it is not surprising that *Brown II*, a year after *Brown I* was decided, going beyond recognition of the "*personal*" right in the individual plaintiffs, fashioned a remedy appropriate for the class. The Court imposed on the states the duty of furnishing an integrated school system, that is, the duty of "effectuat[ing] a transition to a racially nondiscriminatory school *system*."[67] (Emphasis added.) In addition, *Brown II* subordinated the "*present*" right in the individual plaintiffs to the right of Negroes as a class to a unitary, nonracial system - some time in the future.[68]

The central vice in a formerly de jure segregated public school system is apartheid by dual zoning: in the past by law, the use of one set of attendance zones for white children and another for Negro children, and the compulsory initial assignment of a Negro to the Negro school in his zone. Dual zoning persists in the continuing operation of Negro schools identified as Negro, historically and because the faculty and students are Negroes. Acceptance of an individual's application for transfer, therefore, may satisfy that particular individual; it will not satisfy the class. The class is all Negro children in a school district attending, by definition, inherently unequal schools and wearing the badge of slavery separation displays. Relief to the class requires school boards to desegregate the school from which a transferee comes as well as the school to which he goes. It requires conversion of the dual zones into a single system. Faculties, facilities, and activities as well as student bodies must be integrated. No matter what view is taken of the rationale in Brown I, Brown II envisaged the remedy following the wrong, the state's correcting its discrimination against Negroes as a class, through separate schools, by initiating and operating a unitary integrated school system. The gradual transition the Supreme Court authorized was to allow the states time to solve the administrative problems inherent in that change-over. No delay would have been necessary if the right at issue in Brown had been only the right of individual Negro plaintiffs to admission to a white school. Moreover, the delay of one year in deciding Brown II and the gradual remedy Brown II fashioned can be justified only on the ground that the "personal and present" right of the individual plaintiffs must yield to the overriding right of Negroes as a class to a completely integrated public education.

Although psychological harm and lack of educational opportunities to Negroes may exist whether caused by de facto or de jure segregation, a state policy of apartheid aggravates the harm. Thus, Justice Warren quoted with approval the finding of the district court in the Kansas case: "The impact [of the detrimental effect of segregation upon Negro children] is greater when it has the sanction of the law; for the policy of separating the race is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority effects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard]the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system." (Emphasis added.) Brown I, 347 U.S. at 494. The State, therefore, should be under a duty to take whatever corrective action is necessary to undo the harm it created and fostered.69/ "State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." (Emphasis added.) Cooper v. Aaron, 358 U.S. at 7. ~~There~~ Some may ~~be~~ doubt whether tolerance of de facto segregation is an unsubtle form of state action. There can be no doubt as to the nature and effect of segregation that came into being and persists because of state action as part of the longstanding pattern to narrow the access of Negroes to political power and to the life of the community.

In a school system the persons capable of giving class relief are of course its administrators. It is they who are under the affirmative duty to take corrective action toward the goal of one integrated system. As Judges Sobeloff and Bell said in Bradley v. School Board of the City of Richmond, 4 Cir. 1965, 345 F.2d 310, 322:

> ". . . the initiative in achieving desegregation of the public schools must come from the school authorities. . . . Affirmative action means more than telling those who have long been deprived of freedom of educational opportunity. 'You now have a choice.' . . . It is now 1965 and high time for the court to insist that good faith compliance requires administrators of schools to proceed actively with their nontransferable duty to undo the segregation which both by action and inaction has been persistently perpetuated. (Emphasis added.)

In Northcross v. Board of Education, 6 Cir. 1962, 302 F.2d 818 the defendants asserted, as the defendants assert here, that continued segregation is "voluntary on the part of Negro pupils and parents because they do not avail themselves of the transfer provisions." The Court held: "The Pupil Assignment Law . . . will not serve as a plan to convert a biracial system into a nonracial system . . . Negro children cannot be required to apply for that to which they are entitled as a matter of right. . . . The burden rests with the school authorities to initiate desegregation . . . [The Board] should submit some realistic plan for the organization of their schools on a non-racial basis". (Emphasis added.) In Dowell v. School Board of Oklahoma, W.D. Okla. 1965, 244 F. Supp. 971, 975, 978, the School Board in Oklahoma City had "superimposed" a geographic zone plan on "already existing residential segregation initiated by law." The court held: A school board must "adopt policies that would increase the percentage of pupils who are obtaining a desegregated education. . . . [The] failure to adopt an affirmative policy is itself a policy, adherence to which, at least in this case, has slowed up . . . the segregation process. . . . [W]here the cessation of assignment and transfer policies based solely on race is insufficient to bring about more than token change in the segregated system, the Board must devise affirmative action reasonably purposed to effectuate the desegregation goal. This conclusion makes no new law."

The position we take in these consolidated cases is that the only adequate redress for a previously overt system-wide policy of segregation directed against Negroes as a collective entity is a system-wide policy of integration. In Singleton I the Court touched on the state's duty to integrate:

> "In retrospect, the second Brown opinion clearly imposes on public school authorities the duty to provide an integrated school system. Judge Parker's well-known dictum should be laid to rest. It is inconsistent with Brown and the later development of decisional and statutory law in the area of civil rights."

Three years before Singleton I this Court analyzed the problem in Potts v. Flax, 5 Cir. 1963, 313 F.2d 284. In that case the Court rejected a school board's contention that a suit brought by two Negro parents was not a class action even though the record contained testimony that one parent was bringing the action only for his own children and not for other Negro children. The Board contended that a court order was not needed because it was willing to admit any Negro child to a white school on demand of any Negro child. Judge Brown, speaking for the Court, said:

> "Properly construed the purpose of the suit was not to achieve specific assignment of specific children to any specific grade or school. The peculiar rights of specific individuals were not in controversy. It was directed at the system-wide policy of racial segregation. It sought obliteration of that policy of system-wide racial discrimination. . . ." 70/

Even before Potts v. Flax, in Bush v. Orleans Parish School Board, 5 Cir. 1962, 308 F.2d 492, 499, the Court said:

> "In this aspect of [initial] pupil assignment [to segregated schools] the facts present a clear case where there is not only deprivation of the rights of the individuals directly concerned but deprivation of the rights of Negro school children as a class. As a class, and irrespective of any individual's right to be admitted on a non-racial basis to a particular school, Negro children in the public schools have a constitutional right to have the public school system administered free from an administrative policy of segregation." 71/

See also Ross v. Dyer, 5 Cir. 1963, 312 F.2d 191, 194-5; Augustus v. Board of Public Instruction, 5 Cir. 1963, 306 F.2d 862, 869; Holland v. Board of Public Instruction, 5 Cir. 1958, 258 F.2d 730; Orleans Parish School Board v. Bush, 5 Cir. 1957, 242 F.2d 156.

Brown was an inevitable, predictible extension of Sweat v. Painter, 1950, 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114, and McLaurin v. Oklahoma State Regents, 1950, 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149.[72] Those cases involved separate but equal or identical graduate facilities. Factors "incapable of objective measurement" but crucial to a good graduate education were not available to segregated Negroes. ~~There~~ These were the intangible factors that prevented the Negro graduate students from having normal contacts and association with white students. Apartheid made the two groups unequal. In Brown I these same intangibles were found "to apply with added force to children in grade and high schools"; educational opportunity in public schools "must be made available to all on equal terms.

The Brown I finding that segregated schooling causes psychological harm and denies equal educational opportunities should not be construed as the sole basis for the decision.[73] So construed, the way would be open for proponents of the status quo to attempt to show, on the facts, that integration may be harmful or the lesser of two evils. Indeed that narrow view of Brown I has led several district courts into error.[74] We think that the judgment "must have rested on the view that racial segregation is, in principle, a denial of equality to the minority against whom it is directed."[75] The relief Brown II requires rests on recognition of the principle that State-imposed separation by race is an invidious classification and for that reason alone is unconstitutional.[76] Classifications based upon race are especially suspect, since they are "odious to a free people".[77]

In short, compulsory separation, apartheid, is per se discriminatory against Negroes.

A number of post-Brown per curiam decisions not involving education make it clear that the broad dimensions of the rationale are not circumscribed by the necessity of showing harmful inequality. to the individual In these cases Negroes were separated from whites but were afforded equal or identical facilities. Relying on Brown, the Court ordered integration of the facility or activity.[78] See also Anderson v. Martin, 1964, 375 U.S. 399, 402, 84 S.Ct. 454, 11 L.Ed. 430, 433, holding that compulsory designation of a candidate's race on the ballot is unlawful. The designation placed "the power of the State behind a racial classification that induces racial prejudice at the polls."

Bolling v. Sharpe, 1954, 347 U.S. 497, 74 S.Ct. 693, 98 L. Ed. 884, provides further evidence of the breadth of the right recognized in *Brown*. There, because the case concerned the District of Columbia, the Court had to rely on the due process clause of the Fifth Amendment instead of the equal protection clause of the Fourteenth Amendment. Going beyond any question of psychological harm or of the denial of equal educational opportunities, to the individual the Court concluded that racial classifications in public education are so unreasonable and arbitrary as to violate due process:[79]

> "Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. *Segregation in public education is not reasonably related to any proper governmental objective*, and thus it imposes on Negro children . . . a burden that constitutes an arbitrary deprivation of their liberty." 347 U. S. at 498. (Emphasis added.)

As in the jury exclusion cases, when the classification is not "reasonably related to any proper governmental objective," equal protection and due process merge.

If *Brown* had only the narrow meaning *Briggs* gives it, the system of state-sanctioned segregated schools would continue indefinitely with only a little token desegregation. White school boards, almost universal in this circuit, would be able to continue to say that their constitutional duty ends when they provide relief to the particular Negro children who, as individuals, claim their personal right to be admitted to white schools. If the *Briggs* thinking should prevail, the dual system will, for all practical purposes, be maintained: white school officials in most key positions at the state and county levels; Negro faculties in Negro schools, white faculties in white schools; no white children or only a few white children of way-out parents in Negro schools; a few Negroes in some white schools; at best, tokenism in certain school districts.

Brown's broad meaning, its important meaning, is its revitalization of the national constitutional right the Thirteenth, Fourteenth, and Fifteenth Amendments created in favor of Negroes. This is the right of Negroes to national citizenship, their right as a class to share the privileges and immunities only white citizens had enjoyed as a class. Brown erased Dred Scott, used the Fourteenth Amendment to breathe life into the Thirteenth, and wrote the Declaration of Independence into the Constitution. Freedmen are free men. They are created as equal as are all other American citizens and with the same unalienable rights to life, liberty, and the pursuit of happiness. No longer "beings of an inferior race" -- the Dred Scott article of faith -- Negroes too are part of "the people of the United States".

A primary responsibility of federal courts is to protect nationally created constitutional rights. A duty of the States is to give effect to such rights -- here, by providing equal educational opportunities free of any compulsion that Negroes wear a badge of slavery. The States owe this duty to Negroes, not just because every citizen is entitled to be free from arbitrary discrimination as a heritage of the common law or because every citizen may look to his state for equal protection of the rights a state grants its citizens. As Justice Harlan clearly saw in the Civil Rights Cases (1883), 109 U. S. 3, 3 S.Ct. 18, 27 L.Ed. 835, the Wartime Amendments created an affirmative duty that the States ~~erase~~ eradicate all relics, "badges and indicia of slavery" lest Negroes as a race sink back into "second-class" citizenship.

B. The factual situation dealt with in Bell v. School City of Gary, N. D. Ind. 1963, 213 F. Supp. 819, *aff'd* 7 Cir. 1963, 324 F.2d 209, *cert. den'd* 377 U. S. 924 (1964) is not the situation the Supreme Court had before it in *Brown* or that we deal with in this circuit. *Brown* dealt with state-imposed segregation based on dual attendance zones. *Bell* involved nonracially motivated de facto segregation in a school system based on the neighborhood single zone system. In *Bell* the plaintiffs alleged that the Gary School Board had deliberately gerrymandered school attendance zones to achieve a segregated school system in violation of its "duty to provide and maintain a racially integrated system". On the showing that the students were assigned and boundary lines drawn based upon reasonable nonracial criteria, the court held that the school board did not deliberately segregate the races; the racial balance was attributable to geographic and housing patterns. The court analyzed the problem in terms of state action rather than in terms of the Negroes' right to equal educational opportunities. Finding no state action the court concluded that *Brown* did not apply. In effect, the court held that de facto segregated neighborhood schools must be accepted. At any rate, the court said, "states do not have an affirmative duty to provide an integrated education". The Seventh Circuit affirmed.

We must assume that Congress was well aware of the fact that Bell was concerned with de facto segregated neighborhood schools -- only. Notwithstanding the broad language of the opinion relating to the lack of a duty to integrate, language later frequently quoted by Senator Humphrey and others in the debates on the Civil Rights Act of 1964, Congress went only so far as to prohibit cross-district bussing and cross-district assignment of students.

The facts, as found by the Court in Bell, favored the Gary School Board. Other courts, on very similar facts, have decided that there are alternatives to acceptance of the status quo.[80] A commentator on the subject has fairly summed up the cases: "Using Brown as a governing principle, racial imbalance caused by racially motivated conduct is clearly invalid. When racial imbalance results fortuitously, there is a split of authority."[81]

Barksdale v. Springfield School Committee, D.Mass. 1965, 237 F. Supp. 543, similar on the facts to *Bell*, holds squarely contrary to *Bell*:

> "The defendants argue, nevertheless, that there is no constitutional mandate to remedy racial imbalance. Bell v. School City of Gary, Indiana, 324 F.2d 209 (7th Cir. 1963). But that is not the question. *The question is whether there is a constitutional duty to provide equal educational opportunities for all children within the system.* While Brown answered that question affirmatively in the context of coerced segregation, the constitutional fact -- the inadequacy of segregated education -- is the same in this case, and I so find. . . . *This is not to imply that the neighborhood school policy per se is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact.* . . . I cannot accept the view in *Bell* that only forced segregation is incompatible with the requirements of the Fourteenth Amendment, *nor do I find meaningful the statement that '[t]he Constitution . . . does not require integration. It merely forbids discrimination.'* 324 F.2d at 213. . . . ¶ This court recognizes and reiterates that the problem of racial concentration is an educational, as well as constitutional, problem and, therefore, orders the defendants to present a plan no later than April 30, 1965, *to eliminate to the fullest extent possible* racial concentration in its elementary and junior high schools within the framework of effective educational procedures, as guaranteed by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States." (Emphasis added.)

"In short, *Barksdale* [does not analyze *Brown*] in terms of propriety of school board action, but proceeds in terms of a right on the part of Negro students to an equal educational opportunity, which in light of the ruling in *Brown* that separate schools are inherently unequal, must perforce be a right to an integrated educational setting."[82] On appeal, the First Circuit accepted the district court's findings of fact but vacated the order with directions to dismiss without prejudice, because the school board, on its own initiative, had taken action identical with the court-ordered action. 348 F.2d 261. ~~Judge Aldrich, for~~ The Court noted a difference between "the seeming absolutism" of the opinion and the less sweeping order "to eliminate [segregation] to the fullest extent possible . . . within the framework of effective educational procedures".[83/] Taking both opinions together, they recognize that "the state would not be permitted to ignore the problem of de facto segregation. The holding in Brown, unexplained by its underlying reasoning, requires no more than the decision in Bell, but when illuminated by the reasoning, it permits the result in Barksdale and may require that result."[84/] At the very least, as the Barksdale court saw it, there is a duty to integrate in the sense that integration is an educational goal to be given a high, high priority among the various considerations involved in the proper administration of a system beset with de facto segregated schools.

Although Brown points toward the existence of a duty to integrate de facto segregated schools,[85/] the holding in Brown, unlike the holding in Bell but like the holdings in this circuit, occurred within the context of state-coerced segregation. The similarity of pseudo de facto segregation in the South to actual de facto segregation in the North is more apparent than real. Here school boards, utilizing the dual zoning system, assigned Negro teachers to Negro schools and selected Negro neighborhoods as suitable areas in which to locate Negro schools. Of course the concentration of Negroes increased in the neighborhood of the school. Cause and effect came together. In this circuit, therefore, the location of Negro schools with Negro faculties in Negro neighborhoods and white schools in white neighborhoods cannot be described as an unfortunate fortuity: It came into existence as state action and continues to exist as racial gerrymandering, made possible by the dual system.[86/] Segregation resulting from racially motivated gerrymandering is properly characterized as "de jure" segregation. See Taylor v. Board of Education of City District of New Rochelle, D.N.Y. 1961, 191 F. Supp. 181.[87/] The courts have had the power to deal with this situation since Brown I. In Holland v. Board of Education of Palm Beach, 5 Cir. 1958, 258 F.2d 750, although there was no evidence of gerrymandering as such, the court found that the board "maintained and enforced" a completely segregated system by using the neighborhood plan to take advantage of racial residential patterns. See also Evans v. Buchanon, D.Del. 1962, 207 F. Supp. 820 where, inspite of a genuflexion in the direction of Briggs, the Court found that there was gerrymandering of school districts superimposed on a pre-Brown policy of segregation.

C. The defendants err in their contention that the HEW and the courts cannot take race into consideration in establishing standards for desegregation. "The Constitution is not this color blind.[88]"

The Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate governmental purpose. For example, jury venires must represent a cross-section of the community. Strauder v. West Virginia, 1880 , 100 U.S. 303, xxxxx~~S.Ct.~~xxxxxxx,xx 25 L.Ed. 664 . The jury commissioners therefore must have a "conscious awareness of race in extinguishing racial discrimination in jury service". Brooks v. Beto, 5 Cir. 1966, 366 F.2d 1. Similarly, in voter registration cases we have used the "freezing principle" to justify enjoining the use of a constitutional statute where, in effect, the statute would perpetuate past racial discrimination against Negroes. United States v. Louisiana, E.D. La. 1963, 225 F. Supp.
,380 85 S.Ct. 817, 13 L.Ed.2d 817.
353, aff'd 1965/U.S. 145,/ . "[I]t is unrealistic to suppose that the evils of decades of flagrant race discrimination can be overcome by purging registration rolls of white voters. . . . [U]nless there is some appropriate way to equalize the present with the past, the injunctive prohibitions even in the most stringent, emphatic, mandatory terms prohibiting discrimination in the future, continues for many years a structure committing effectual political power to the already

registered whites while excluding Negroes from this vital activity of citizenship." United States v. Ward, 5 Cir. 1965, 349 F.2d 795, 802. "An appropriate remedy . . . should undo the results of past discrimination as well as prevent future inequality of treatment." United States v. Duke, 5 Cir. 1964, 332 F.2d 759, 768. If the Constitution were absolutely color-blind, consideration of race in the census and in adoption proceedings would be unconstitutional.

Here race is relevant,[89] because the governmental purpose is to offer Negroes equal educational opportunities. The means to that end, such as disestablishing segregation among students, distributing the better teachers equitably, equalizing facilities, selecting appropriate locations for schools, and avoiding resegregation must necessarily be based on race. School officials have to know the racial composition of their school populations and the racial distribution within the school district. The Courts and HEW cannot measure officials' good faith or progress without taking race into account. "When racial imbalance infects a public school system, there is simply no way to alleviate it without consideration of race. . . . There is no constitutional right to have an inequality perpetuated."[90] Judge Sobeloff's answer in Wanner v. Arlington County School Board, 4 Cir. 1966, 357 F.2d 452 , is our answer in this case:

> "If a school board is constitutionally forbidden to institute a system of racial segregation by the use of artificial boundary lines, it is likewise forbidden to perpetuate a system that has been so instituted. It would be stultifying to hold that a board may not move to undo arrangements artificially contrived to effect or maintain segregation, on the ground that this interference with the status quo would involve 'consideration of race.' When school authorities, recognizing the historic fact that existing conditions are based on a design to segregate the races, act to undo these illegal conditions - especially conditions that have been judicially condemned - their effort is not to be frustrated on the ground that race is not a permissible consideration. This is not the 'consideration of race'

> which the Constitution discountenances. . . . There is no legally protected vested interest in segregation. If there were, then Brown v. Board of Education and the numerous decisions based on that case would be pointless. Courts will not say in one breath that public school systems may not practice segregation, and in the next that they may do nothing to eliminate it." Wanner v. Arlington County School Board, 4 Cir. 1966, 357 F.2d 452, 454-55.

D. Under Brigg's blessing, school boards throughout this circuit first declined to take any affirmative action that might be considered a move toward integration. Later, they embraced the Pupil Placement Laws as likely to lead to no more than a little token desegregation. Now they turn to freedom of choice plans supervised by the district courts. As the defendants construe and administer these plans, without the aid of HEW standards, there is little prospect of the plans ever undoing past discrimination or of coming close to the goal of equal educational opportunities. Moreover, freedom of choice, as now administered, necessarily promotes resegregation. The only relief approaching adequacy is the conversion of the still-functioning dual system to a unitary, non-racial system -- lock, stock, and barrel.

If this process be "integration" according to the 1955 Briggs court, so be it. In 1966 this remedy appears to us to be the relief commanded by Brown, the Constitution, the Past, the Present, and ~~the Future~~ the wavy fore-image of the Future.

IV.

We turn now to the specific provisions of the Civil Rights Act on which the defendants rely to show that HEW violates the Congressional intent. These provisions are the amendments to Title IV and VI added in the Senate. The legislative history of these amendments is sparse and less authoritative than usual because of the lack of committee reports on the amended version of the bill.

A. Section 401(b) defines desegregation:

> "'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students

> to public schools in order to overcome racial imbalance."

~~These provisions are the amendments to Title IV and VI added in the Senate. The legislative history of these amendments is sparse and less authoritative than usual because of the lack of committee reports on the amended version of the bill.~~

The affirmative portion of this definition, down to the "but" clause, describes the assignment provision necessary in a plan for conversion of a de jure dual system to a unitary, integrated system. The negative portion, starting with "but", excludes assignment to overcome racial imbalance, that is, acts to overcome de facto segregation. As used in the Act, therefore, "desegregation" refers only to the disestablishment of segregation in de jure segregated schools. Even if a broader meaning should be given to "assignment . . . to overcome racial imbalance, Section 401 would not mean that such assignments are unlawful.[91] The intent of the statute is that federal assistance will be withheld when students are assigned to schools, not in their own district, to overcome de facto segregation.

The prohibition against assignment of students to overcome racial imbalance was added as an amendment during the debates in the House to achieve the same result as the anti-bussing provision in section 407. Some of the difficulty in understanding the Act and its legislative history arises from the statute's use of the undefined term "racial imbalance". It is clear however from the hearings and debates that Congress equated the term, as do the commentators, with "de facto segregation", that is, non-racially motivated segregation in a school system based on a single neighborhood school for all children in a ~~definable~~ definable area.[92] Thus, Congressman William Cramer who offered the amendment, was concerned that the bill as originally proposed might authorize the government to require bussing to overcome de facto segregation. In explaining the amendment, he said:

> "In the hearings before the committee I raised questions on 'racial imbalance' and in the subcommittee we had lengthy discussions in reference to having these words stricken in the title, as it then consisted, and to strike out the words 'racial imbalance' proposed by the administration. ¶ The purpose is to prevent any semblance of congressional acceptance or approval of the concept of 'de facto' segregation or to include in the definition of 'desegregation any balancing of school attendance by

> moving students across school district lines to level off percentage where one race outweights another."

The neighborhood school system is rooted deeply in American culture.[93] Whether its continued use is constitutional when it leads to grossly imbalanced schools is a question some day to be answered by the Supreme Court, but that question is ~~it is~~ not present in any of the cases before this Court. As noted in the previous section of this opinion, we have many instances of a heavy concentration of Negroes or whites in certain areas, but always that type of imbalance has been superimposed on ~~on top of~~ total school separation. And always the separation originally was racially motivated and sanctioned by law in a system based on two schools within a neighborhood or overlapping neighborhoods, each school serving a different race. The situations have some similarity but they have different origins, create different problems, and require different corrective action.[94]

In the 1964 Act (and again in 1966 during consideration of amendments to the Elementary and Secondary Education Act of 1965) Congress, within the context of debates on aid to de facto segregated schools declined to decide just what should be done about imbalanced neighborhood schools. The legislative solution, if there is one to this problem, will require a carefully conceived and thoroughly debated comprehensive statute. In the 1964 Act Congress simply directed that the federal assistance provided in Title IV, §403-5 was not to be used for developing plans to assign pupils to overcome racial imbalance.[95] Similarly, Congress withheld authorizing the Attorney General, in school desegregation actions, to ask for a court order calling for bussing pupils from one school to another to "achieve a racial balance".[96]

B. Section 407(a)(2) of Title IV authorizing the Attorney General to file suit to desegregate, contains the "anti-bussing" proviso:

> ". . . nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial compliance with constitutional standards."

First, it should be noted that the prohibition applies only to transportation; and only to transportation across school lines to achieve racial balance. The furnishing of transportation as part of a freedom of choice plan is not prohibited. Second, the equitable powers of the courts exist independently of the Civil Rights Act of 1964. It is not contended in the instant cases that the Act conferred new authority on the courts. And this Court has not looked to the Act as a grant of new judicial authority.

Section 407(a)(2) might be read as applying only to orders issued in suits filed by the Attorney General under Title IV. However, Senator, now Vice President Humphrey, Floor Manager in the Senate, said that it was his understanding that the provision applied to the entire bill. In particular, he said that it applies to any refusal or termination of federal assistance under Title VI since the procedure for doing so requires an order approved by the President. Senator Humphrey explained that:

> "This addition seeks simply to *preclude an inference that the title confers new authority to deal with 'racial imbalance' in schools*, and should serve to soothe fears that Title IV might be read to empower the Federal Government to order the bussing of children around a city in order to achieve a certain racial balance or mix in schools. ¶ Furthermore, a new section 410 would explicitly declare that 'nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.' ¶ Thus, classification along *bona fide neighborhood school lines*, or *for any other legitimate reason* which local school boards might see fit to adopt, would not be affected by Title IV, so long as such classification was bona fide. Furthermore, this amendment makes clear that the only Federal intervention in local schools will be for the purpose of preventing denial of equal protection of the laws." (Emphasis added.)

Senator Humphrey spoke several times in the language of *Briggs* but his reference to *Bell* indicate that the restrictions in the Act were pointed at the Gary, Indiana, de facto type of segregation. Senator Byrd (West Virginia) asked Senator Humphrey would he give assurance "that under Title VI school children may not be bussed from one end of the community to another end of the community at taxpayers expenses to relieve so-called racial imbalance in the schools". Senator Humphrey replied:

> "I do . . . That language is to be found in Title IV. The provision [§407(a)(2)] merely quotes the substance of a recent court decision which I have with me, and which I desire to include in the Record today, the so-called Gary case."

Senator Humphrey explained:

> "Judge Beamer's opinion in the Gary case is significant in this connection. In discussing this case, as we did many times, it was decided to write the thrust of the court's opinion into the proposed substitute."

The thrust of the Gary case (Bell) was that if school districts were drawn without regard to race, but rather on the basis of such factors as density of population, travel distances, safety of the children, costs of operating the school system, and convenience to parents and children, those districts are valid even if there is a racial imbalance caused by discriminatory practices in housing. Thus, continuing his explanation, Senator Humphrey said:

> "The bill does not attempt to integrate the schools, but it does attempt to eliminate segregation in the schools. The natural factors, such as density of population, and the distance that students would have to travel are considered legitimate means to determine the validity of a school district, if the school districts are not gerrymandered, and in effect deliberately segregated. The fact that there is a racial imbalance per se is not something which is unconstitutional. That is why we have attempted to clarify it with the language of Section 4." (Emphasis added.)

C. Section 601 states the general purpose of Title VI of the Act:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (Emphasis added.)

This is a clear congressional statement that racial discrimination against the beneficiaries of federal assistance is unlawful. Children attending schools which receive federal assistance are of course among the beneficiaries. In the House, Congressman Celler explained:

> "The legality is based on the general power of Congress to apply reasonable conditions . . . ¶ In general, it seems rather anomalous that the Federal Government should aid and abet discrimination on the basis of race, color or national origin by granting money and other kinds of financial aid. It seems rather shocking, moreover, that while we have on the one hand the 14th

> amendment, which is supposed to do away with discrimination since it provides for equal protection of the laws, on the other hand, we have the Federal Government aiding and abetting those who persist in practicing racial discrimination."

In the Senate, Senator Javits, an assistant floor manager, expressed concern as to the clarity of the statement of policy:

> "I ask the Senator whether we now have a clear understanding that if title VI shall be enacted as it is now proposed, the express and clear policy of Congress against aiding discrimination will prevail . . ."

Senator Humphrey answered:

> "Some Federal agencies appear to have been reluctant to act in this area. Title VI will require them to act. Its enactment will thus serve to insure uniformity and permanence to the nondiscrimination policy."

D. Section 604 of the Act, 42 U.S.C. § 2000(d)(3), is the section the defendants principally rely upon and the section most misunderstood.[66][97] It provides:

> "Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment." (Emphasis added.)

The defendants contend that this section bars any action requiring desegregation of faculties and school personnel.

Section 604 was not a part of the original House bill. Senator Humphrey, while introducing the Act ~~with its amendments,~~ explained: "[The] Commissioner might also be justified in requiring elimination of racial discrimination in employment or assignment of teachers, at least where such discrimination affected the educational opportunities of students. See Board of Education of Duval County v. Braxton, 5 Cir. 1964, 326 F.2d 616."/ 110 Cong.Rec. p. 6345. That was in March 1964. In June 1964, in explaining the amendments, Senator Humphrey said, "[t]his provision is in line with the provisions of section 602 and serves to spell out more[98] precisely the declared scope of coverage of the title." In the same speech he stated (110 C.R. 12714): "We have made no changes of substance in Title VI." This explanation plainly indicates that the amendment was not intended as a statutory bar to faculty integration in schools receiving federal aid.

However, in the interval between these two explanations the Attorney General, in response to a letter from Senator Cooper, stated that Section 602 would not apply to federally aided employers who discriminated in employment practices: "Title VI is limited . . . to discrimination against the beneficiaries of federal assistance programs. . . . Where, however, employees are the intended beneficiaries of a program, Title VI would apply".[99] He gave as an example accelerated public works programs. It was after the receipt of the Attorney General's letter that the amended Senate bill was passed. The school boards argue therefore that Section 604 was enacted, because of the Attorney General's interpretation, to exclude interference with employment practices of schools.

In its broadest application this argument would allow racial discrimination in the hiring, discharge, and assignment of teachers. In its narrowest application this argument would allow discrimination in hiring and discharging but not in assigning teachers, an inexplicable anomaly.[100] There is no merit to this argument. Section 604 and the Attorney General's letter are not inconsistent, since under Section 601 it is the school children, not the teachers (employees), who are the primary beneficiaries of federal assistance to public schools. Faculty integration is essential to student desegregation. To the extent that teacher discrimination jeopardizes the success of desegregation, it is unlawful wholly aside from its effect upon individual teachers.

After Section 601 was proposed, additional clarifying language was suggested to make it clear that discrimination in certain employer-employee relationships, not affecting the intended beneficiaries of the program, would be excluded from the reach of the statute. See Hearings, H.R. Comm. on Rules, H. R. 7152, 88th Cong., 2d Sess. (1964), pp. 94, 226; 110 C.R. 6544-46 (Senator Humphrey). For example, there was a serious question as to whether the bill would forbid a farmer who was receiving benefits under the Agricultural Adjustment Act from discriminating upon the basis of race in the selection of his employees. Hearings, H.R. Comm. on Rules, H. R. 7152, 88 Cong., 2d Sess., 1964, p. 94, 110 C.R. 6545 (Senator Humphrey). The addition of Section 604 to the bill as originally proposed clearly excluded the application of the Act to this type of situation. Congress did not, of course, intend to provide a forum for the relief of individual teachers who might be discriminatorily discharged; Congress was interested in a general requirement essential to success of the program as a whole.[101]

Collaterally to their argument on Section 604, the defendants cite Section 701(b) of Title VII, covering Equal Employment Opportunities, which specifically excepts a "state or political subdivision thereof". This section has no application to schools. Section 701(b), defines "employer" as "a person engaged in an industry affecting commerce who has twenty-five or more employees. . . ."

Section 604 was never intended as a limitation on desegregation of schools. If the defendants' view of Section 604 were correct the purposes of the statute would be frustrated, for one of the key to desegregation is integration of faculty. As long as a school has a Negro faculty it will always have a Negro student body. As the District Court for the Western District of Virginia put it in Brown v. County School Board of Frederick County, 1965, 245 F. Supp. 549, 560:

> "[T]he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a 'colored school' just as certainly as if the words were printed across its entrance in six-inch letters."

As far as possible federal courts ~~we~~ must carry out congressional policy. But we must not overlook the fact that "we deal here with constitutional rights and not with those established by statute".[102] The right of Negro students to be free from racial discrimination in the form of a segregated faculty is part of their broader right to equal educational opportunities. The "mandate of Brown . . . forbids the [discriminatory] consideration of race in faculty selection just as it forbids it in pupil placement." Chambers v. Hendersonville City Board of Education, 4 Cir. 1966, 364 F.2d 189.

In *Brown II* the Supreme Court specifically referred to the reallocation of staff as one of the reasons permitting desegregation "with all deliberate speed". "In determining the additional time necessary . . . courts may consider problems related to administration, arising from . . . *personnel*. . . ." (Emphasis added.) 349 U.S. at 301. For ten years, however, this Court and other circuit courts[103] had approved district courts' postponing hearings on faculty desegregation. Bradley v. School Board of the City of Richmond, 1965, 382 U. S. 103, 86 S.Ct. 224, 15 L.Ed.2d 187 put an end to this practice. In *Bradley* the Supreme Court held that faculty segregation had a direct impact on desegregation plans. The court summarily remanded the case to the district court holding that it was improper for that court to approve a desegregation plan without considering, at a full evidentiary hearing, the impact of faculty allocation on a racial basis. The Court said, ~~that~~ there is "no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans are entirely speculative." Moreover, "Delays in desegregation of school systems are no longer tolerable." 382 U.S. at 105. In Rogers v. Paul, 1965, 382 U.S. 198, 200, 86 S.Ct. 358, 15 L.Ed.2d 265, the Supreme Court held that Negro students in grades not yet desegregated were entitled to an immediate transfer to a white high school. They "plainly had standing" to sue on two theories: (1) "that *racial allocation of faculty denies them equality of educational opportunity without regard to* segregation of pupils, and (2) that it renders inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades." In *Singleton* this Court, relying on *Bradley*, held that it was "essential" for the Jackson schools to make an "adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators and other personnel." 355 F.2d at 870.

In Board of Public Instruction of Duval County Florida v. Braxton, 1964, 326 F.2d 616, 620, cert. denied 377 U. S. 924, the case cited by Senator Humphrey, this Court affirmed an order of the district court prohibiting assignment of "teachers and other personnel . . . on a racially segregated basis." ~~integration of faculty is indispensable to the success of the desegregation plan as a whole~~

In Smith v. Board of Education of Morrillton, 8 Cir. 1966, 365 F.2d 770, the Court said:

> "It is our firm conclusion that the reach of the Brown decisions, although they specifically concerned only pupil discrimination, clearly extends to the proscription of the employment and assignment of public school teachers on a racial basis. Cf. United Public Workers v. Mitchell, 330 U. S. 75, 100 (1947); Wieman v. Updegraff, 344 U. S. 183, 191-192 (1952). See Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc., 372 U. S. 714, 721 (1963). This is particularly evident from the Supreme Court's positive indications that nondiscriminatory allocation of faculty is indispensable to the validity of a desegregation plan. Bradley v. School Board, supra; Rogers v. Paul, supra. This court has already said, 'Such discrimination [failure to integrate the teaching staff] is proscribed by Brown and also the Civil Rights Act of 1964 and the regulations promulgated thereunder'. Kemp v. Beasley, supra, p. 22 of 352 F.2d."

In Wheeler v. Durham City Board of Education, 4 Cir. 1966, 363 F.2d 738, 740 the Court stated: "We read [Bradley] as authority for the proposition that removal of race considerations from faculty selection and allocation is, as a matter of law, an inseparable and indispensable command within the abolition of pupil segregation in public schools as pronounced in Brown v. Board of Education, 347 U.S. 483. Hence no proof of the relationship of faculty allocation and pupil assignment was required here. The only factual issue is whether race was a factor entering into the employment and placement of teachers." In Wright v. County School Board of Greensville County, Virginia, E.D.Va. 1966, 252 F. Supp. 378, 384, holding that a faculty desegregation provision approved by the Commissioner of Education was not sufficient, the court said:

> "The primary responsibility for the selection of means to achieve employment and assignment of staff on a non-racial basis rests with the school board. . . . Several principles must be observed by the board. Token assignments will not suffice. The elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date. The plan must contain well defined procedures which will be put into effect on definite dates. The board will be allowed ninety days to submit amendments to its plan dealing with staff employment and assignment practices."

In Kier v. County Board of Augusta County, W.D. Va. 1966, 249 F. Supp. 239, 247, the court held that free choice plans requires faculty integration:

> "Freedom of choice, in other words, does not mean a choice between a clearly delineated 'Negro school' (having an all-Negro faculty and staff) and a 'white school' (with all-white faculty and staff). School authorities who have heretofore operated dual school systems for Negroes and whites must assume the duty of eliminating the effects of dualism before a freedom of choice plan can be superimposed upon the pre-existing situation and approved as a final plan of desegregation. It is not enough to open the previously all-white schools to Negro students who desire to go there while all-Negro schools continue to be maintained as such. . . . The duty rests with the School Board to overcome the discrimination of the past, and the long-established image of the 'Negro school' can be overcome under freedom of choice only by the presence of an integrated faculty."

See also Dowell v. School Board, W.D. Okla. 1965, 244 F.Supp. 971, 977, and Franklin v. County School Board of Giles Co., 4 Cir. 1966, 360 F.2d 325.

We cannot impute to Congress an intention to change the substance of Title VI, tearing the vitals from the statutory objective, contrary to Senator's Humphrey's explanation of Section 604. Integration of faculty is indispensable to the success of a desegregation plan. Nor can we impute to Congress the intention to license, unconstitutionally, discrimination in the employment and assignment of teachers, the most conspicuous badge of de jure segregated schools.[104]

E. As we construe the Act and its legislative history, especially the sponsors' reliance on Bell, Congress, because of its hands-off attitude on bona fide neighborhood school systems, qualified its broad policy of nondiscrimination by precluding HEW's requiring the bussing of children across district lines or requiring compulsory placement of children in schools to strike a balance when the imbalance results from de facto, that is, non-racially motivated segregation. As Congressman Cramer said, "De facto segregation is racial imbalance". But there is nothing in the language of the Act or in the legislative history that equates corrective acts to desegregate or to integrate a dual school system initially based on de jure segregation with acts to bring about a racial balance in a system based on bona fide neighborhood schools.

Congress recognized that HEW's requirements for qualifying for financial assistance is one thing and the Court's constitutional and judicial responsibilities are something else again. The Act states, therefore, that it did not enlarge the courts' existing powers to ensure compliance with constitutional standards. But ~~we point out,~~ neither did it reduce the courts' power.

V.

~~As we construe~~ The HEW Guidelines ~~they~~ agree with decisions of this circuit and of the similarly situated Fourth and Eighth Circuits. And they stay within the Congressional mandate. There is no cross-district or cross-town bussing requirement. There is no provision requiring school authorities to place white children in Negro schools or Negro children in white schools for the purpose of striking a racial balance in a school or school district proportionate to the racial population of the community or school district.[105] The provision referring to percentages is a general rule of thumb or objective administrative guide for measuring progress in desegregation rather than a firm requirement that must be met.[106] See language italicized in footnote 105. Good faith in compliance should be measured by performance, not promises.

In reviewing the effectiveness of an approved plan it seems reasonable to use some sort of yardstick or objective percentage guide. The percentage requirements in the Guidelines are modest, suggesting only that systems using free choice plans for at least two years should expect 15 to 18 per cent of the pupil population to have selected desegregated schools. This Court has frequently relied on percentages in jury exclusion cases. Where the percentage of Negroes on the jury and jury venires is disproportionately low compared with the Negro population of a county, a prima facie case is made for deliberate discrimination against Negroes.[107] Percentages have been used in other civil rights cases.[108] A similar inference may be drawn in school desegregation cases, when the number of Negroes attending school with white children is manifestly out of line with the ratio of Negro school children to white school children in public schools. ~~This is not~~

Common sense suggests that a gross discrepancy between the ratio of Negroes to white children in a school and the HEW percentage guides raises an inference that the school plan is not working as it should in providing a unitary, integrated system. Thus Evans v. Buchanan, D.C. Del. 1962, 207 F. Supp. 820[109] held that this natural inference coupled with the board's possessing the ~~thatxthe~~ probative facts ~~[illegible]~~ that might rebut the inference created ~~possessionxofxthexschoolxboardxcreate~~ a presumption that the proposed desegregation plan was unconstitutional.

The Guidelines were adopted for the entire country. However, they have been formulated in a context sympathetic with local problems. Sections 403-405 of the 1964 Civil Rights Act provide that, upon request, the Commissioner of Education may render technical assistance to public school systems engaged in desegregation. The Commissioner may also establish training institutes to counsel school personnel having educational problems occasioned by desegregation; and the Commissioner may make grants to school boards to defray the costs of providing in-service training on desegregation. In short, the Commissioner may assist those school boards who allege that they will have difficulty complying with the guidelines. When desegregation plans do not meet minimum standards, the school authorities should ask HEW for assistance. And district courts should invite HEW to assist by giving advice in raising the levels and by coordinating a school's promises with a school's performances of the plans. In view of the competent assistance HEW may furnish schools in difficulties, there is a heavy burden on proponents of the argument that their schools cannot meet HEW standards.

VI.

School authorities in this circuit, with few exceptions, have turned to the "freedom of choice" method for desegregating public schools. The method has serious shortcomings. Indeed, the "slow pace of integration in the Southern and border States is in large measure attributable to the manner in which free choice plans . . . have operated."[110] When such plans leave school officials with a broad area of uncontrolled discretion, this method of desegregation is better suited than any other to preserve the essentials of the dual school system while giving paper compliance ~~to~~ with the duty to desegregate.

A free choice plan does not abandon geographical criteria, but requires no rigid adherence to attendance zones. Theoretically every child may choose his school, but its effectiveness depends on the availability of open places in balanced schools. Moreover, unless there is some provision to prevent white children transferring out of an imbalanced school this plan will promote resegregation.[111]

"Under freedom of choice plans, schools tend to retain their racial identification."[112] Such plans require affirmative action by parents and pupils to disestablish the existing system of public schools. In this circuit white students rarely ~~chose~~ choose to attend schools identified as Negro schools. Negro students who choose white schools are, as we know from many cases, only Negroes of exceptional initiative and fortitude. New construction and improvements to the Negro school plant attract no white students and diminish Negro motivation to ask for transfer. Nevertheless, the Eighth Circuit has approved freedom of choice plans "as a permissible method at this stage, although recognizing that such a plan "is still only in the experimental stage and it has not yet been demonstrated that such a method will fully implement the decision of *Brown* and subsequent cases and the legislative declaration of §2000(d) of the Civil Rights Act of 1964".[113] We have said: "At this stage in the history of desegregation in the deep South a 'freedom of choice plan' is an acceptable method for a school board to use in fulfilling its duty to integrate the school system. In the long run, it is hardly possible that schools will be administered on any such haphazard basis". Singleton II, 355 F.2d at 871 . HEW recognizes freedom of choice as a permissible means of desegregation. ~~in certain circumstances~~ See Revised Guidelines, Subpart B, 181.11, and all of Subpart D.

Courts should closely scrutinize all such plans. Freedom of choice plans "may. . . .be invalid because the 'freedom of choice' is illusory. The plan must be tested not only by its provisions, but by the manner in which it operates to provide opportunities for a desegregated education." Wright v. County School Board of Greenville County, E.D.Va. 1966, 252 F.Supp. 378,383. In that case the court was concerned that "operation under the plan may show that the transportation policy or the capacity of the schools severely limits freedom of choice, although provisions concerning these phases are valid on their face". In Lockett v. Board of Education of Muskogee County,Ga., 5 Cir. 1965, 342 F.2d 225, we were concerned that "proper notice" be given so that "Negro students are afforded a reasonable and conscious opportunity to apply for admission to any school which they are otherwise eligible to attend without regard to race". Also, as Judge Bell, for the Court, pointed out, "a necessary part of the plan is a provision that the dual or biracial school attendance system . . . be abolished." See also Dowell v. School Board of Oklahoma City, W.D.Okla. 1965, 244 F. Supp. 971; Bell v. School Board of City of Staunton, W.D.Va. 1966, 249 F.Supp. 249 ; Kier v. School Board of County of Augusta, W.D.Va. 1966, 249F.Supp. 239.

This Court realizes the problems facing school authorities, especially in rural areas where segregation has been the way of life from cradle to coffin. There is much, however, that school authorities should do to meet their responsibilities: ~~Judge Kaufman put it eloquently in a general admonition:~~

> "[Brown] called for responsible public officials to reappraise their thinking and policies, and to make every effort to afford Negroes the more meaningful equality guaranteed them by the Constitution. The Brown decision, in short, was a lesson in democracy, directed to the public at large and more particularly to those responsible for the operation of the schools. It imposed a legal and moral obligation upon officials who had created or maintained segregated schools to undo the damage which they had fostered. Taylor v. Board of Education, S.D.N.Y. 1961, 191 F. Supp. 181, 187, aff'd 294 F.2d 36, cert. den'd 368 U.S. 940 (1961).

School officials should consult with Negro and white school authorities leaders before plans are put in final form. They should see that notice of plans and procedures are clear and timely. They should avoid the discriminatory use of tests and the use of birth and health certificates to make transfers difficult. They should eliminate inconvenient or burdensome arrangements for transfer, such as requiring the personal appearance of parents, notarized forms, signatures of both parents, making forms available at inconvenient times to working people. They should employ forms which do not designate the name of a Negro school as the choice or contain a "waiver" of the "right" to attend white schools. Certainly school officials should not discourage Negro children from enrolling in white schools, directly or indirectly, as for example, by advising them that they would not be permitted to engage or would not want to engage in school activities, athletics, the band, clubs, school plays. If transportation is provided for white children, the schedules should be re-routed to provide for Negro children. Overcrowding should not be used as an excuse to avoid transfers of Negro children. In Bradley v. School Board of the City of Richmond, 4 Cir. 1965, 345 F.2d 310, 323, Judges Sobeloff and Bell, concurring, said:

> "A plan of desegregation is more than a matter of words. The attitude and purpose of public officials, school administrators and faculties are an integral part of any plan and determine its effectiveness more than the words employed. If these public agents translate their duty into affirmative and sympathetic action the plan will work; if their spirit is obstructive, or at best nagative, little progress will be made, no matter what form of words may be used."

Freedom of choice means the maximum amount of freedom and clearly understood choice in a bona fide unitary system where schools are not white schools or Negro schools -- just schools. The test is whether "freedom of choice" works.

We turn now to a discussion of specific questions of relief common among the cases involving freedom of choice plans.

A. Speed of Desegregation. The announced speed of desegregation no longer seems to be a critical issue. The school boards generally concede that by the school year 1967-68 all grades should be desegregated.

B. Mandatory Annual Free Choice. Underlying and tending to counteract the effectiveness of all the freedom of choice plans before the Court is the initial unconstitutional assignment of all students by race. When the freedom of choice plan is "permissive" or "voluntary" the effect is to superimpose the same old transfer plan on racial assignments and dual zones. We hold that any freedom of choice plan is inadequate if based upon a preliminary system of assignment by race or dual geographic zones. See Singleton II and Lockett v. Board of Education of Muscogee County, Ga., 5 Cir. 1965, 342 F.2d 225, restating the requirement of Stell v. Savannah-Chatham County Board of Education, 5 Cir. 1964, 333 F.2d 55 and Gaines v. Dougherty County Board of Education, 5 Cir. 1964, 334 F.2d 983. It is essential that dual or biracial school attendance systems be abolished contemporaneously with the application of a plan to the respective grades reached by it.

In place of permissive freedom of choice there must be a mandatory annual free choice of schools by all students, both white and Negro. "If a child or his parent is to be given a meaningful choice, this choice must be afforded annually." Kemp v. Beasley, 8 Cir. 1965, 352 F.2d 14, 22. The initial assignment, within space limitations, should be made by a parent or by a child over fifteen without regard to race. This mandatory free choice system would govern even the initial assignment of students to the first grade and to kindergarten. At the minimum, a freedom of choice plan should provide that: (1) all students in desegregated grades shall have an opportunity to exercise a choice of schools. Bradley v. School Board, Richmond, Va., 4 Cir. 1965, 345 F.2d 310, vacated and remanded, 1965, 382 U.S. 103; (2) where the number of applicants applying to a school exceeds available space, preferences will be determined by a uniform non-racial standard, Stell v. Savannah-Chathem County Board of Education, 5 Cir. 1964, 333 F.2d 55, 65; and (3) when a student fails to exercise his choice, he will be assigned to a school under a uniform non-racial standard, Kemp v. Beasley, 8 Cir. 1965, 352 F.2d 14, 22.

C. Notice. The notice provisions of the HEW Guidelines seem to be reasonable and should be followed. Where public notice by publication in a newspaper will assure adequate notice, individual notice will not be necessary. Individual notice should be required if notice by publication is likely to be inadequate.

D. Transfers for Students in Non-desegregated Grades and with Special Needs. In Singleton II we held that children in still-segregated grades in Negro schools "have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race."[114] 355 F.2d at 869. See also Rogers v. Paul, 1965, 382 U. S. 198, 15 L.Ed.2d 265. A transfer provision should be included in the plan. The right to transfer under a state Pupil Placement Law should be regarded as an additional right that takes into consideration criteria irrelevant to the absolute right referred to in Rogers v. Paul.

E. Services, Facilities, Activities, and Programs. In Singleton II we held that there should be no segregation or discrimination in services, facilities, activities, and programs that may be conducted or sponsored by, or affiliated with, the school in which a student is enrolled. We have in mind, school athletics, of course, but also parents-teachers associations. In order to eliminate any uncertainty on this point, we hold that the plan should contain a statement that there will be no such segregation or discrimination.

F. School Equalization. In recent years, as we are all well aware, Southern states have exerted great effort to improve Negro school plants. There are however many old and inferior schools readily identifiable as Negro schools; there are also many superior white schools, in terms of the quality of instruction. A freedom of choice plan will be ineffective if the students cannot choose among schools that are substantially equal. A school plan therefore should provide for closing inferior schools and should also include a provision for remedial programs to overcome past inadequacies of all-Negro schools. This will, of course, require the local school authorities and the trial courts to examine carefully local situations and perhaps seek advice from qualified, unbiased authorities in the field.

G. Scheduled Compliance Reports. Scheduled compliance reports to the court on the progress of freedom of choice plans are a necessity and of benefits to all the parties. These should be required following the choice period and again after the opening of school. None of the school boards expressly objected to this provision, or one similar to it, and it does not appear onerous.

H. Desegregation of Faculty and Staff. The most difficult problem in the desegregation process is the integration of faculties. See Section IV D of this opinion. A recent survey shows that until the 1966-67 session not a single Negro teacher in Alabama, Louisiana, or Mississippi has been assigned to a school where there are white teachers.[115] As evidenced in numerous records, this long continued policy has resulted in inferior Negro teaching and in inferior education of Negroes as a class. Everyone agrees, on principle, that the selection and assignment of teachers on merit should not be sacrificed just for the sake of integrating faculties; teaching is an art. Yet until school authorities recognize and carry out their affirmative duty to integrate faculties as well as facilities, there is not the slightest possibility of their ever establishing an operative non-discriminatory school system.[116] The transfer of a few Negro children to a white school does not do away with the dual system. A Negro faculty makes a Negro school; the Negro school continues to offer inferior educational opportunities; and the school system continues its psychological harm to Negroes as a class by not putting them on an equal level with white children as a class.[117] To prevent such harm or to undo the harm, or to prevent resegregation, the school authorities, even in the administration of an otherwise rational, nondiscriminatory policy, should take corrective action involving racial criteria. ~~Exxx~~ As we pointed out (ee Section III C), in fashioning an appropriate remedy tending to undo past discrimination this Court has often taken race into account.

In the past year, district courts have struggled with the problem of framing effective orders for the desegregation of faculty. (1) Some courts have focused upon the specific results to be reached by reassignment of teachers previously assigned solely upon the basis of their race. Dowell v. School Board of Oklahoma City, W.D.Okla. 1965, 244 F. Supp. 971, Kier v. County School Board of Augusta County, Virginia, W.D.Va. 1966, 249 F. Supp. 239.[118] The orders entered in these cases require the defendant school boards to assign any employed teachers and reassign already-employed faculty so that the proportion of each race assigned to teach in each school will be the same as the proportion of teachers of that race in the total teaching staff in the system, or at least, of the particular school level in which they are employed. (2) Other courts have not been specific as to the number of teachers of each race that should be assigned to each school in order to remove the effects of past discriminatory assignments. These courts have focused upon the mechanics to be followed in removing the effect of past discrimination rather than upon the result as such. Thus, in Beckett v. School Board of the City of Norfolk, Civil Action No. 2214 (E.D.Va., 1966); Gilliam v. School Board of the City of Hopewell, Virginia, Civil Action No. 3554 (E.D.Va. 1966); and Bradley v. School Board of City of Richmond, Civil Action No. 3353 (E.D.Va. 1966), the courts approved consent decrees setting forth in detail the considerations that would control the school administrators in filling faculty vacancies and in transferring already-employed faculty members in order to facilitate faculty integration. (3) In a third group of cases, the district court, while emphasizing the necessity of affirmative steps to undo the effects of past racial assignments of faculty and while requiring some tangible results, has not been specific regarding the mechanics or the specific results to be achieved. See Harris v. Bullock County Board of Education, M.D.Ala. 1966, 253 F. Supp. 276; United States v. Lowndes Board of Education, Civil Action No. 2328-N (M.D.Ala. 1966); Carr v. Montgomery County Board of Education, M.D.Ala. 1966, 253 F. Supp. 306.

In Singleton I we agreed with the original HEW Guidelines in requiring that an "adequate start" should be made in 1966-67. The requirement that all grades be desegregated in 1967-68 increases the need for substantial progress beyond an "adequate start". It is essential that school officials (1) cease practicing racial discrimination in the hiring and assignment of new faculty members and (2) take affirmative programmatic steps to correct existing effects of past racial assignment. If these two requirements are prescribed, the district court should be able to add specifics to meet the particular situation the case presents. The goal should be an equitable distribution of the better teachers.[119] We anticipate that when district courts and this Court have gained more experience with faculty integration, the Court will be able to set forth standards more specifically than they are set forth in the decrees in the instant cases.

VII

We attach a decree to be entered by the district courts in these cases consolidated on appeal. See Appendix A.

We have carefully examined each of the records in these cases. In each instance the record supports the decree. However, the provisions of the decree are intended, as far as possible, to apply uniformly throughout this circuit in cases involving plans based on free choice of schools. School boards, private plaintiffs, and the United States may, of course, come into court to prove that exceptional circumstances compel modification of the decree. For example, school systems in areas which let school out during planting and harvesting seasons may find that the period for exercise of choice of schools, March 1-31, should be changed to a different month.

As Brown dictates, the decree places responsibility on the school authorities to take affirmative action to bring about a unitary, non-racial system. As the Constitution dictates, the proof of the pudding is in the eating: the proof of a school board's compliance with constitutional standards is the result -- the performance. Has the operation of the promised plan actually eliminated segregated and token-segregated schools and achieved substantial integration?

The substantive requirements of the decree derive from the Fourteenth Amendment as interpreted by decisions of the Supreme Court and of this Court, in many instances before the HEW Guidelines were published. For administrative details, we have looked to the Office of Education. For example, those familiar with the HEW Guidelines will note that the decree follows the Guidelines exactly as the form letters which go to parents announcing the need to exercise a choice of schools, and the forms for exercising that choice are the same. Indeed a close parallel will be noted between much in

Parts II through V of the decree and the Guideline provisions.

The great bulk of the school districts in this circuit have applied for federal financial assistance and therefore operate under voluntary desegregation plans.[120] Approval of these plans by the Office of Education qualifies the schools for federal aid. In this opinion we have held that the HEW Guidelines now in effect are constitutional and are within the statutory authority created in the Civil Rights Act of 1964. Schools therefore, in compliance with the Guidelines can in general be regarded as discharging constitutional obligations.

Some schools have made no move to desegregate or have plans rejected as unsatisfactory by district courts or the HEW. We expect the provisions of the decree to be applied in proceedings involving such schools. Other schools have earlier court-approved plans which fall short of the terms of the decree. On motion by proper parties to re-open these cases, we expect these plans to be modified to conform with our decree. In some cases the parties may challenge various aspects of HEW-approved plans. Our approval of the existing Guidelines and the deference owed to any future Guidelines is not intended to deny a day in court to any person asserting individual rights or to any school board contesting HEW action.[121] In any school desegregation case the issue concerns the constitutional rights of Negroes,individually and as a class, and the constitutional rights of the State -- not the issue whether federal financial assistance should be withheld under Title VI of the Civil Rights Act of 1964.

When school systems are under court-ordered desegregation, the courts are responsible for determining the sufficiency of the system's complaince with the decree. The courts' task,therefore, is a continuing process, especially in major areas readily susceptible of observation and measurement, such as faculty integration and student desegregation. (1) As to faculty, we have found that school authorities have an affirmative duty to break up the historical pattern of segregated faculties, the hall-mark of the dual system.

District Courts may call upon HEW for assistance in determining whether a school's performance measures up to its promises.

To aid the courts in its task, the decree requires the school authorities to report to the district courts the progress made toward faculty integration. The school authorities bear the burden of justifying an apparent lack of progress.[122] (2) As to students, the decree requires school authorities to make reports to the court showing by race, by school, by grade, the choices made in each "choice period". A similar report is required after schools open to show what actually happened when schools opened.

What the decree contemplates, then, is continuing judicial evaluation of compliance by measuring the performance -- not merely the promised performance -- of school boards in carrying out their constitutional obligation "to disestablish dual, racially segregated school systems and to achieve substantial integration within such systems."[123] ↑ If school officials in any district should find that their district still has segregated faculties and schools or only token integration, their affirmative duty to take corrective action requires them to try an alternative to a freedom of choice plan, such as a geographic attendance plan, a combination of the two, the Princeton plan, or some other acceptable substitute, perhaps aided by an educational park. Freedom of choice is not a key that opens all doors to equal educational opportunities.

Given the knowledge of the educators and administrators in the Office of Education and their day to day experience with thousands of school systems, judges and school officials can ill afford to turn their backs on the proffer of advice from HEW. Or from any responsible government agency or independent group competent to work toward solution of the complex problem of de jure discrimination bequeathed this generation by ten preceding generations.

Now after twelve years of snail's pace progress toward school desegregation, courts are entering a new era. The question to be resolved in each case is: How far have formerly de jure segregated schools progressed in performing their affirmative constitutional duty to furnish equal educational opportunities to all public school children? The clock has ticked the last tick for tokenism and delay in the name of "deliberate speed".

* * * * *

In the suit against the Caddo Parish School Board July 19, 1965, the United States moved to intervene under §902 of the Civil Rights Act of 1964 (42 U.S.C. §2000h-2). The motion was filed twelve days after the Board submitted its plan in compliance with the district court's decree of June 14, 1965, but two days before the original plaintiffs filed their objections and before the court issued its order approving the plan. The district Court denied the motion on the ground that it came too late. In these circumstances we consider that the motion was timely filed and should have been granted.

The Court denied the motion of certain appellants to consolidate their cases, but allowed consolidation of briefs and, in effect, treated the cases as consolidated for purposes of appeal. The Court, however, in each case has separately considered the particular contentions of all the parties in the light of the record.

The Court REVERSES the judgments below and REMANDS each case to the district court for further proceedings in accordance with this opinion.

COX, District Judge:

I reserve the right to dissent in whole or in part at a later date.

APPENDIX A:

PROPOSED DECREE

It is ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them, be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the   school system. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of past racial discrimination in the operation of the school system:

I.

SPEED OF DESEGREGATION

Commencing with the 1967-68 school year, in accordance with this decree, all grades, including kindergarten grades, shall be desegregated and pupils assigned to schools in these grades without regard to race or color.

II.

EXERCISE OF CHOICE

The following provisions shall apply to all grades:

(a) Who May Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) Annual Exercise of Choice. All students, both white and Negro, shall be required to exercise a free choice of schools annually.

(c) Choice Period. The period for exercising choice shall commence on March 1 and end on March 31 preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice. A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens shall be assigned to the school nearest his home where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) Public Notice. On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of the notice shall be substantially similar to the text of the explanatory letter sent home to parents. (See paragraph II(e).) Publication as a legal notice will not be sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Copies of this decree shall be posted in each school in the school system and at the office of the Superintendent of Education.

(e) Mailing of Explanatory Letters and Choice Forms. On the first day of the choice period there shall be distributed by first-class mail an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the defendants) of each student who will be entering a desegregated grade in the following year, together with a return envelope addressed to the Superintendent. Should the defendants satisfactorily demonstrate to the court that they are unable to comply with the requirement of distributing the explanatory letter and choice form by first-class mail, they shall propose an alternative method which will maximize individual notice, i.e., personal notice to parents by delivery to the pupil with adequate procedures to insure the delivery of the notice. The text for the explanatory letter and choice form shall essentially conform to the sample letter and choice form appended to this decree.

(g) Extra Copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

(h) Content of Choice Form. Each choice form shall set forth the name and location of the grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate the signature of the student and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, may be required or requested, without approval of court.

(i) Return of Choice Form. At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

(j) Choices not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(k) Choice Forms Binding. When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices from their children under the conditions set forth in paragraph II (a) of this decree and in exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student.

(l) Preference in Assignment. In assigning students to schools, no preferences shall be given to any student for prior extraordinary attendance at a school and, except with the approval of court in circumstances, no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the system.

(m) Second Choice where First Choice is Denied. Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student shall have seven days from the receipt of notice of a denial of first choice in which to exercise a second choice.

(n) Transportation. Where transportation is generally provided, buses must be routed to the maximum ~~extend~~ extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing either the formerly white or the formerly Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules.

(o) Official not to Influence Choice. At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, ~~or~~ and favor or penalize any person because of a choice made. If the defendant school board employs professional guidance counselors, such persons shall base their guidance and counselling on the individual student's particular personal, academic, and vocational needs. Such guidance and counselling by teachers as well as professional guidance counsellors shall be available to all students without regard to race or color.

(p) Protection of Persons Exercising Choice. Within their authority school officials are responsible for the protection of persons exercising rights under or otherwise affected by this decree. They shall, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference shall include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board shall not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this decree. ~~On the opening day of school, the School Superintendent or some appropriate person acting for him shall inform the principal and teachers of each school in the system that they are to refrain from such conduct and that further they will take all steps necessary to assure that students in their charge will refrain from such conduct~~. If officials of the school system are not able to provide sufficient protection, they shall seek whatever assistance is necessary from other appropriate officials.

III.

PROSPECTIVE STUDENTS

Each prospective new student shall be required to exercise a choice of schools before or at the time of enrollment. All such students known to defendants shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Where there is no pre-registration procedure for newly entering students, copies of the choice forms shall be available at the Office of the Superintendent and at each school during the time the school is usually open.

IV.

TRANSFERS

(a) Transfers for Special Needs. Any student who requires a course of study not offered at the school to which he has been assigned may be permitted, upon his written application, at the beginning of any school term or semester, to transfer to another school which offers courses for his special needs.

(b) Transfers for Students in Non-Desegregated Grades. Any student in still segregated grades to which the choice provisions of this decree do not yet apply shall have the right at the beginning of a new term, to transfer to any school from which he was excluded or would otherwise be excluded on account of his race or color.

(c) Transfers to Special Classes or Schools. If the defendants operate and maintain special classes or schools for physically handicapped, mentally retarded, or gifted children, the defendants may assign children to such schools or classes on a basis related to the function of the special class or school that is other than freedom of choice. In no event shall such assignments be made on the basis of race or color or in a manner which tends to perpetuate a dual school system based on race or color.

V.

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extracurricular activity) that may be conducted or sponsored by or affiliated with the school in which he is enrolled A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to long-standing, non-racially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fileds, meeting rooms, and all other school related services, facilities, activities, and programs such as Commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the defendants shall be conducted without regard to race or color.

VI.

SCHOOL EQUALIZATION

(a) Inferior Schools. In schools heretofore maintained for Negro students, the defendants shall take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white students. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios shall, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned on the basis of freedom of choice. By

October of each year, defendants shall report to the Clerk of the Court, pupil-teacher ratios, pupil-classroom ratios, per-pupil expenditures both as to operating and capital improvement costs, and shall outline the steps to be taken and the time within which they shall accomplish the equalization of such schools.

(b) Remedial Programs. The defendants shall provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

VII.

NEW CONSTRUCTION

The defendants, to the extent consistent with the proper operation of the school system as a whole, shall locate any new school and substantially expand any existing schools with the objective of eradicating the vestiges of the dual system and of eliminating the effects of segregation. ~~To insure adequate compli-~~

~~information the defendants consider pertinent for purposes of this Section. Copies of such reports shall be filed with the Clerk of the Court and served upon opposing counsel no later than October 1, and August 14 of each succeeding year.~~

VIII.

FACULTY AND STAFF

(a) Faculty Eemployment. Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of teachers in the dual system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on a desegregated faculty. Defendants shall take positive and affirmative steps to accomplish the desegregation of their school faculties and to achieve substantial desegregation of faculties in as many of the schools as possible for the 1968-69 school year notwithstanding that teacher contracts for the 1966-67 or 1967-68 school years may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The defendants shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school.

(b) Dismissals. Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

(c) Past Assignments. The defendants shall take steps to assign and reassign teachers and other professional staff members to eliminate past discriminatory patterns.

IX.

REPORTS TO THE COURT

(1) Report on Choice Period. The defendants shall serve upon the opposing parties and file with the Clerk of the Court on or before February 15, 1967, and, in each subsequent year, on or before June 1, a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each

grade of each school. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

In addition, the report shall show the percentage of pupils actually transferred or assigned from segregated grades or to schools attended predominantly by pupils of a race other than the race of the applicant, for attendance during the 1966-67 school year, with comparable data for the 1965-66 school year. Such additional information shall be included in the report served upon opposing counsel and filed with the Clerk of the Court.

(2) Report After School Opening. The defendants shall, in addition to reports elsewhere described, serve upon opposing counsel and file with the Clerk of the Court within 15 days after the opening of schools for the fall semester of each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies, by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(iii) The number of students by race, in each grade of each school.

(School System Name and Office Address)

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, who is entering a desegregated grade must make a choice of schools. If a child is entering the ninth or a higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by August 1, 1967. You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the Office of the Superintendent at any time between July 15 and August 15. No one may require you to return your choice form before August 1 and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. [Delete if the school system does not provide transportation.]

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,

Superintendent

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent, [address], by August 1, 1967. A choice is required for each child.

Name of child ______________________________
(Last) (First) (Middle)

Address ______________________________

Name of Parent or other adult serving as parent ______________________________

If child is entering first grade, date of birth:

____
(Month) (Day) (Year)

Grade child is entering ______________________________

School attended last year ______________________________

Choose one of the following schools by marking an X beside the name.

Name of School	Grade	Location

Signature ____________________

Date ____________________

____

____

To be filled in by Superintendent:

School Assigned ____________

APPENDIX B

Rate of Change and Status of Desegregation

(Leeson, Faster Pace, Scarcer Records, Southern Education Report 28-32 (Jan.-Feb. 1966), quoted in Emmerson and Huber, Political and Civil Rights in the United States, 1695-99 (1966))

". . . Both the 11-state Southern area and the border area, the latter consisting of six states and the District of Columbia, experienced a sharper increase in the percentage of Negroes in desegregated schools for 1965-66 than in previous years. But only the Southern states showed a changed attitude toward reporting records by race; in only three Southern states could nearly complete statistics be obtained district by district. As in other years, three of the border states plus the District of Columbia continued to keep records by race, and three states did not.

Correspondents for Southern Education Reporting Service . . . found that 15.89 per cent of the Negroes enrolled in the public schools of the region attended classes with whites, mostly in formerly all-white schools but sometimes also in formerly all-Negro schools. This numbered 567,789 Negro students out of the region's Negro enrollment of 3,572,810.

In the first 10 years after the Supreme Court decisions on segregated schools, in 1954 and 1955, the Southern and border region increased the number of Negroes in schools with whites at an average of about one per cent a year. Although the impetus of the Supreme Court's rulings and the possibility of direct involvement in legal action were factors, most districts desegregating through last year acted "voluntarily" and only about 10 per cent required a specific court order. By the end of the 1964-65 school year, the region had enrolled 10.9 per cent of its Negro students in biracial classrooms.

The 1964 Civil Rights Act brought pressure on every district in the nation but the compliance effort admittedly was concentrated on the South. . . . Beginning in the spring of 1965 and continuing even through the first months of the 1965-66 school year, HEW's Office of Education negotiated with officials in each district to obtain compliance by the school officials either signing a statement, submitting a court-ordered desegregation plan or adopting a voluntary plan.

With the new school year, the region had increased the number of Negroes in desegregated schools by five percentage points to reach 15.9 per cent, while in the previous two school years the rate of increase in this figure had only been between one and two percentage points. For 1964-65, the region had 10.9 per cent of the Negro enrollment in desegregated schools, an increase of 1.7 percentage points over 1963-64, and for that year the 9.2 per cent figure was an increase of 1.2 percentage points over 1962-63. (See Table I.) . . .

TABLE I

The Rate of Change

Percentage of Negroes in Schools with Whites

School Year	*South*	% *Change*	*Border*	% *Change*	*Region*	% *Change*
1959-60*	.160		45.4		6.4	
1960-61	.162	.002	49.0	3.6	7.0	.6
1961-62	.241	.079	52.5	3.5	7.6	.6
1962-63	.453	.212	51.8	-0.7	8.0	.4
1963-64	1.17	.717	54.8	3.0	9.2	1.2
1964-65	2.25	1.08	58.3	3.5	10.9	1.7
1965-66	6.01	3.76	68.9	10.6	15.9	5.0

* First school year in which SERS began recording number of Negroes in schools with whites.

Up through the 1962-63 school year, the 11 Southern states together had fewer than one per cent of their Negro students in schools with whites. In 1963-64, the figure passed the one per cent mark and it almost doubled for 1964-65 to become 2.25 per cent of the Negroes in biracial schools, an increase of more than one percentage point. For the 1965-66 school year, the percentage more than doubled and reached 6.01 per cent.[1]

The six border states and the District of Columbia desegregated at a faster rate than did the South, and by the 1961-62 school year that area had more than half of its Negro enrollment attending desegregated schools. The annual change in the number of Negroes in desegregated border schools averaged about three per cent a year, and by 1964-65, the border area had desegregated 58.3 per cent of its Negro enrollment. In the current school year, the border area has 68.9 per cent of its Negro students attending the same schools with whites, a jump of over 10 percentage points from the previous year's figure.

This year, as in previous years, a disparity exists between what might be called "technical" desegregation and "actual" desegregation. Last year, for example, 56 per cent of the region's Negro students were enrolled in districts having desegregation policies, but about 11 per cent of the total Negro enrollment attended desegregated schools. This year, the region has 97 per cent of its districts in official compliance with federal desegregation regulations, and 93 per cent of the region's combined Negro and white enrollment comes from these districts. However, the actual attendance of Negroes in desegregated schools amounts to almost 16 per cent. The difference in these figures was accentuated this year by the fact that almost 2,000 school districts having either all-white or all-Negro enrollments are included in the "in compliance" statistics. . . .

Among the Southern states, Texas leads in the number and percentage of Negroes in schools with whites--an estimated 60,000 Negroes or 17 per cent of the state's Negro enrollment. Tennessee ranks second in the area with 16 per cent and Virginia third with 11 per cent. Three states-Alabama, Louisiana, and Mississippi--continue to have less than one per cent of their Negro enrollment attending schools with whites. The other Southern states--Arkansas, Florida,Georgia, North Carolina and South Carolina--vary between 1 and 10 per cent of their Negro students in biracial classrooms.

All but one of the border states have more than half of their Negroe enrollments in desegregated schools. Oklahoma has 38 per cent of its Negroes in biracial schools, Maryland has 56 per cent, and Delaware, the District of Columbia, Kentucky, Maryland, Missouri and West Virginia have desegregated more than three-fourths of their Negro student population. . . .

The desegregation statistic showing the sharpest increase this year was the number of districts with desegregation policies. The region now has 4,804 public school districts that have received approval from the U. S. Office of Education for their desegregation proposals. When the last school year ended, SERS reported that 1,476 districts had desegregated in practice or in policy.

TABLE III

Status of Desegregation

(17 Southern and Border States and D.C.)

	School Districts				*Enrollment*		*Negroes in Schools with Whites*	
	Total	*With Negroes and Whites*	*In Compliance†*	*Not In Compliance†*	*White*	*Negro*	*No.*	*%††*
Alabama	118	119	105	14	559,123**	295,848**	1,250*	.43
Arkansas	410	217	400	10	337,652**	111,952**	4,900*	4.38
Florida	67	67	67	0	1,056,805*	256,063*	25,000*	9.76
Georgia	196	180	192	5	784,917*	355,950*	9,465*	2.66
Louisiana	67	67	33	34	483,941	318,651	2,187	.69
Mississippi	149	149	118	31	309,413	296,834	1,750*	.59
North Carolina	170	170	165	4	828,638**	349,282**	18,000*	5.15
South Carolina	108	108	86	21	374,007	263,983	3,864	1.46
Tennessee	152	129	149	2	714,241*	176,541*	28,801	16.31
Texas	1,325	850	1,303	7	2,136,150*	349,192*	60,000*	17.18
Virginia	130	127	124	12	757,037**	239,729**	27,550*	11.49
SOUTH	2,892	2,183	2,742	140	8,341,924	3,014,025	182,767	6.01
Delaware	58	47	59	0	86,041	20,485	17,069	83.32
Dist. of Columbia	1	1	1	0	15,173	128,843	109,270	84.81
Kentucky	200	167	204	0	713,451**	59,835**	46,891	78.37
Maryland	24	23	24	0	583,796	178,851	99,442	55.60
Missouri	1,096	212*	675	0	843,167	105,171	79,000*	75.12
Oklahoma	1,046	323	1,044	4	564,250*	45,750*	17,500*	38.25
West Virginia	55	44	55	0	425,087*	19,850*	15,850*	79.85
BORDER	2,480	817	2,062	4	3,230,965	558,785	385,022	68.90
REGION	5,372	3,000	4,804	144	11,572,889	3,572,810	567,789	15.89

* Estimated.

** 1964-65.

† The sum of adding the districts "In Compliance" and "Not in Compliance" will not always equal the total number of districts because the Office of Education reports a different number of

FOOTNOTES TO APPENDIX B

1/ Other estimates are summarized in Report of the United States Commission on Civil Rights, Survey of School Desegregation in the Southern and Border States 1965-1966, 27-28 (Feb. 1966)

". . . The Office of Education based on a sampling of 590 districts through a telephone survey conducted in cooperation with State departments of education, estimates that 216,000, or 7.5 percent, of the Negro students in the 11 Deep South States are enrolled in school this year with white pupils. [Office of Education, telephone survey, Table I, Sept. 27, 1965.] Civil rights organizations, relying upon figures obtained from a variety of sources, including field workers, advance a lower figure. The Southern Regional Council's estimate is 151,416 Negro pupils, or 5.23 percent of the total. [Southern Regional Council, 'School Desegregation: Old Problems Under a New Law' 9, Sept. 1965.] The American Friends Service Committee and NAACP Legal Defense and Educational Fund agree that the actual figure is less than 6 percent [American Friends Service Committee and NAACP Legal Defense and Educational Fund, 'Report on the Implementation of Title VI of the Civil Rights Act of 1964 in Regard to School Desegregation' 4, Nov. 15, 1965]."

Erratum Sheet - Brief for the United States in Banks, United States v. Claiborne Parish School Board, No. 23192

Footnote 10 at pages 39-41 should be corrected to read as follows:

The faculty provisions in the Hopewell case, which were filed with the district court on April 8, 1966, read as follows:

> The School Board of the City of Hopewell recognizes its responsibility to employ, assign, promote and discharge teachers and other professional personnel of the Hopewell City Public School System without regard to race or color. It further recognizes its obligation to take all reasonable steps to eliminate existing racial segregation of faculty that has resulted from the past operation of a dual school system based upon race or color.
>
> In order to carry out these responsibilities, the School Board has adopted the following program:
>
> 1. Teachers and other professional personnel will be employed solely on the basis of qualifications and without regard to race or color.
>
> 2. In the recruitment and employment of teachers and other professional personnel, all applicants and other prospective employees will be informed that the City of Hopewell operates a racially integrated school system and that the teachers and other professional personnel in the System are subject to assignment in the best interest of the System and without regard to their race or color.
>
> 3. The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage some of the teachers presently employed in the System to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred. Such transfers will be made by the Superintendent and his staff in all cases in which the teachers are qualified and suitable, apart from race or color, for the positions to which they are to be transferred.
>
> 4. Newly employed teachers will be selected for and assigned to schools without regard to their race or color, provided, that if there is more than one newly employed teacher who is equally qualified and suitable for a particular position and the race of one of these teachers is different from the race of the majority of the teachers on the faculty where the vacancy exists, such teacher will be assigned to the vacancy in preference to one whose race is the same.

5. In filling faculty vacancies which occur prior to the opening of each school year, consideration will be given to presently employed teachers of the race opposite the race that is in the majority in the faculty at the school where the vacancy exists. In making such transfers account will be taken of the criteria utilized in approving transfers for other reasons.

6. Some desegregation of the faculty will occur in each school in the system at the commencement of the 1966-67 school year.

7. Faculty meetings, committee meetings, pre-school orientation sessions and all matters that affect the entire school system, will be conducted on a desegregated basis. As vacancies occur in the visiting teacher staff, the school nurse staff, the special teaching staff and the administrative staff such vacancies will be filled without regard to the race or color of applicants.

Erratum Sheet-Brief for the United States in Johnson, United States v. Jackson Parish School Board, No. 23173

Footnote 9 at pages 39-41 should be corrected to read as follows:

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

OCT 1 8 1965

October 13, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Carl Rachlin, Esq.
38 Park Row
New York, New York

Dear Carl:

The enclosed order was issued over objections similar to those in the Jackson Parish case. Do you think we should appeal this one too?

Best wishes,

Harris

HARRIS

HD/ew

[enclosed, 'Harris' to Raechlin, 1965, oct. 13]

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF LOUISIANA

P. O. BOX 106
SHREVEPORT, LA. 71102

October 11, 1965

Hon. Jack P.F. Gremillion,
Attorney General,
State Capitol Building,
Baton Rouge, Louisiana.

Hon. Fred L. Jackson,
District Attorney,
Claiborne Parish,
Homer, Louisiana.

Messrs. Collins, Douglas
and Elie, Attorneys at Law,
2211 Dryades Street,
New Orleans, Louisiana.

Mr. Harris David,
Attorney at Law,
932 Royal Street, Apt. G.,
New Orleans, Louisiana.

Mr. Alvin J. Bronstein,
Attorney at Law,
603 N. Parish,
Jackson, Mississippi.

IN RE: CIVIL ACTION NO. 11,304-S
Yvornia Decarol Banks, et al vs.
CLAIBORNE PARISH SCHOOL BOARD, etc., et al.

Gentlemen:

Please find enclosed herewith to each of you the Order on Plan for Desegregation which was signed by the Honorable Ben C. Dawkins, Jr., this date and filed.

Very truly yours,

ALTON L. CURTIS, CLERK

BY: Mary Anne Rainey
Deputy Clerk

mar
encls.

Claiborne Parish

city in Jackson Parish

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
301 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

[illegible]

TELEPHONE
[illegible]

October 18, 1965

Carl Rachlin, Esq.
38 Park Row
New York, New York

Dear Carl:

We will appeal the Claiborne Parish and Jackson Parish decisions. We assume that your office will handle the arguments.

I am concerned that the appeal will delay the matriculation of the Jackson and Claiborne plaintiffs. A motion for injunctive relief pending appeal under 28 U.S.C. 1651 might afford relief. Paragraph 7 of the Jackson plan provides that if any part of the plan is held invalid, the rest continues in effect. One might argue that if any part of the plan is appealed, the rest of the plan continues in effect.

Bob, Nils and Lolis are fine, and send their regards.

Best wishes,

Harris

HARRIS DAVID

HD/sw

Dear Harris

We will

October 19, 1965

Harris David, Esq.
c/o Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

RE: Banks v. Claibourne Parish

Dear Harris:

I absolutely agree with you that we should appeal the Claibourne Parish order. May I suggest to you that we move the Fifth Circuit to consolidate the Jackson Parish and the Claibourne Parish appeals since they involve substantially the same issues and since, presumably, we would want a common ruling on both parishes.

You and I are in substantial agreement on the relief we should seek so let us move ahead. With best regards to Bob, Nils and Lolis,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Richard Haley
Marvin Rich

October 22, 1965

Harris David, Esq.
c/o Collins, Douglas & Elies, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

Thank you for your letter of the 18, concerning Claibourne Parish. Your suggestion is a good one about attempting to get an injunction under 28 U.S.C. 1651.

We have just received a proposed plan in the City of Monroe case which I have not yet been able to analyze. I assume you also have a copy since Collins, Douglas & Elie are referred to as one of the counsel in the case. I will be in touch with you very shortly on our suggestions in this regard. Superficially, it appears to be very similar to the Jackson Parish case. By the way, is the Billy Hargiss, who is a member of the Monroe City School Board, the reactionary radio minister?

You will hear from us shortly.

Sincerely,

CR/cs

CARL RACHLIN
General Counsel

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

November 26, 1965

Messrs. Robert F. Collins,
Nils R. Douglas and
Lolis E. Elie
Attorneys at Law
2211 Dryades St.
New Orleans, La.

Re: Yvornia Decarol Banks, et al -vs-
Claiborne Parish School Board, et al.

Dear Sir:

This is to advise that this office has received the transcript of record in the above case.

A deposit of $ 437.50 is requisite to cover the estimated costs of Court and printing of the record; this deposit is estimated as follows:

Estimated number of printed pages..(165).... at $2.50 per page..........................	$ 412.50
Reproducing (pages that cannot be set in type) and Inserting (booklets, patents, etc. furnished by counsel)......................	$
Total Estimated Cost of Printing Record......	$ 412.50
Docketing Fee....................................	$ 25.00
TOTAL......................	$ 437.50

Usually the deposit required will exceed the actual cost of printing and the balance out of said deposit will be refunded after the record is printed.

(A CERTIFIED CHECK OR EXCHANGE ON NEW YORK OR NEW ORLEANS BANK, OR MONEY ORDER FOR THIS DEPOSIT IS DUE AND PAYABLE WITHIN 15 DAYS FROM RECEIPT OF THIS REQUISITION, AS PROVIDED IN RULE 23(2).

When the record is printed a copy will be forwarded to all counsel whose appearance has been entered, with notice as to the time for filing briefs, etc.

cc: Mr. Carl Rachlin
Mr. Alvin J. Bronstein
Mr. Harris David
Hon. Jack P. F. Gremillion
Mr. Harry J. Kron, Jr.
Mr. Fred L. Jackson

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Lydia G. Comberrel
Deputy Clerk

FPI—LK—3-31-65—3M—4683

enclosed, Comberrel to Collins, etc, 1965, Nov. 26]

MEMORANDUM FROM CLERK TO COUNSEL

The attached requisition covers the cost of printing the entire record as bound and certified up by the District Court, including any exhibits which may be physically incorporated therein. This requisition does not cover the cost of printing any exhibits or depositions certified by the Clerk separately from the original bound record, which are automatically considered by the Court in their original form without the necessity of their being reproduced.

I am authorized to remind counsel that this Court encourages you to reduce by designations or stipulation the size of the record to be printed, in order to minimize the costs of appeal, by eliminations of any unnecessary printing expense, such as that attributable to the printing of subpoenas, citations, summons, certificates of service, and such exhibits which may have been bound into the record*, but which could nevertheless still be conveniently considered by this Court in such form without being printed or photostated, etc.,together with all other "matters not essential to the decision of the questions presented by the appeal." See Fifth Circuit Rule 23(a)(6),(b) and (c); Rule 75(e),F.R.C.P. Further, Rule 23(a) provides that "the Court may refer to other (unprinted) portions" of the record on file, or hereafter "cause others to be printed if found needful." If, therefore, counsel desire to omit any portions of the record deemed unnecessary to be printed in the light of this memorandum, this may still be done either by stipulation or by separate designations exchanged and filed in this office within fifteen (15)days from the date of the enclosed requisition. If this is done, a revised requisition will be forwarded to counsel.

*If the Clerk of the District Court has not advised counsel, either by furnishing you with a copy of his index or otherwise, of the exhibits, if any, which have been physically bound into the record, the record on appeal may be released to counsel upon request for his inspection for a limited period pursuant to Rule 5(4) of this Court

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

February 7, 1966

Hon. John Doar
Assistant Attorney General
Department of Justice
Washington, D. C.

Re: **No. 23192 - Yvornia Decarol Banks, et al**
-vs- Claiborne Parish School Board, et al.

Dear Sir:

I am authorized by this court to advise that your **Motion for Leave to Intervene as of Right as an Appellant.** was received and filed this **7th** day of **February**, 19**66**, and under the rules and practice of this Court will be presented for ruling without oral argument on or about **February 23, 1966*** , together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/bwc
cc: Mr. Alvin J. Bronstein
Mr. Carl Rachlin
Mr. Harris David
Mr. Haskell A. Kassler
Hon. Jack P. F. Gremillion
Mr. Fred L. Jackson

* This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

FEB 8 1966

WILLIAM Q. KEENAN
219 EAST 42ND STREET
NEW YORK, N. Y. 10017

February 7, 1966

Stephen M. Nagler, Esq.
Congress of Racial Equality
38 Park Row
New York 38, N. Y.

Re: Banks v. Claiborne Parish, No. 11304

Johnson v. Jackson Parish, No. 11130

Dear Steve:

I remember our conversation of last December and I will be glad to brief the above cases. I have just finished looking over the papers and will need additional data. The following documents are missing from the Banks record:

(1) A list of the docket entries by date in the dockets both of the Shreveport Division of the Western District of Louisiana and the docket of the Fifth Circuit of Appeals in No. 22883, an interlocutory appeal from the denial of a temporary restraining order. I need this list of docket entries to ascertain the dates of pleadings and litigational events involved because the file copies often lack dates.

(2) The trial court order denying a temporary restraining order.

(3) The application for a temporary restraining order. The draft of the order is already in the file. Maybe no formal application was ever submitted in writing.

(4) The transcript of hearing on the T.R.O. if any hearing was held.

(5) The notice of appeal from denial of the T.R.O.

(6) The defendants' reply to the request for admissions.

(7) Transcript of the trial.

(8) Copy of the trial court's decree.

(9) Copy of the desegregation plan filed by defendants pursuant to the decree.

(10) Written objections, if any, which plaintiffs filed to the desegregation plan.

(11) Transcript of hearing, if any, on these objections.

(12) A copy of the final judgment or decree dated October 11, 1965 which is being appealed from.

In Johnson v. Jackson Parish #11130 I need the following documents:

(1) Docket entries in the trial court for the reason stated above.

(2) Copy of the petition or complaint filed by plaintiffs.

(3) A motion was filed to amend the petition or complaint. I need a copy of the court's order on that motion.

(4) The answers filed by defendants to plaintiffs' interrogatories.

(5) Defendants' replies to plaintiffs' request for admission.

(6) A subpoena duces tecum was issued at plaintiffs' request to Superintendent Koonce of the Jackson Parish school board. I suspect a motion to quash was filed. If so, I need a

copy of the hearing transcript on that motion, a copy of the motion, and a copy of the resulting order.

(7) There was evidently a trial on July 27, 1965. I need a copy of the transcript.

(8) A copy of the court's decree.

(9) A copy of the plan which defendants filed pursuant to that decree.

(10) A copy of objections, if any, filed to that plan.

(11) The transcript of hearing, if any, on these objections.

(12) The final judgment dated October 5, 1965 from which appeal is being taken.

I have not had time to review the brief on the third case, Andrews v. City of Monroe, No. 11297 but forward this request for papers on the other two cases immediately in view of the imminence of the brief date. Please let me know for sure on what date briefs are due. Is the record appendix being printed? If so, I shall need a copy of it promptly in order to make appropriate page references in the brief. If not, what is the basis on which the court will decide the case?

Although I want to help, if you can't supply me with this material within the next week or so, I have to warn you that I may be disabled from giving you a draft of this brief on time. I know very well the pressures you are operating under and I don't have any doubt that you were unable to send me these papers until this morning, but that delay now creates a time squeeze and I must ask you to supply me with this material as fast as you can.

Best regards,

Yours very truly,

Bill Keenan

William Q. Keenan

WQK:lm

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

EDWARD W. WADSWORTH
Clerk

OFFICE OF THE CLERK

RM. 408- 400Royal St.
New Orleans, La.

February 10, 1966

Mr. Robert F. Collins
Attorney at Law
2211 Dryades Street
New Orleans, Louisiana

No. 23173 - Margaret M. Johnson, et al
-vs- Jackson Parish School Board, et al
Re: No. 23192 - Yvornia Decarol Banks, et al
-vs- Claiborne Parish School Board, et al
No. 23253 - Jimmy Andrews, et al - vs- City of Monroe, Louisiana, et al.

Dear Sir:

I am authorized by this court to advise that your Motion to Consolidate was received and filed this 10th day of February 19 66 , and under the rules and practice of this Court will be presented for ruling without oral argument on or about February 25, 1966*, together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

/bwc
cc: Mr. Carl Rachlin
Mr. Alvin J. Bronstein
Mr. Harris David
Mr. Fred L. Jackson
Mr. William F. Pipes, Jr.
Mr. Albin P. Lassiter
Mr. Harold B. Juddell
Hon. Jack P.F. Gremillion
Mr. William H. Baker

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

APR 28 1966

April 26, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Banks v. Claiborne Parish School Board
No. 23192

Dear Mr. Rachlin:

A few days ago Richard Thomson (c/o Mr. and Mrs. George Dodd, 1208 Jefferson Avenue, Homer, Louisiana) informed me that the notices for applications for transfer of schools were mailed to the students affected, as per paragraph 2 of the order in the above-entitled case. The notices were post-marked and dated April 3, 1966, a Sunday. However, in at least a number of cases, the notices were not received until Wednesday, April 6, 1966. Thus, the students had two or three days in which to apply. A number of said students were out of town on April 6, 1966. Some of them were unable to apply for transfer within the ordered period. The fact that the notices were post-marked on a Sunday raises some suspicion about the mailing procedure. The fact that the notices were received on Wednesday, which ordinarily would mean that they were mailed on Tuesday, raises further doubt.

At any rate, I am taking the liberty of requesting Richard Thomson to obtain statements from the students involved, and, where possible, to attach the notices and envelopes. I do not know whether said statements will be helpful or not, but I thought that we might as well obtain them. Let me know if you would like them to be forwarded to you.

Best,

Mac Farmer

Malcolm Farmer III

MFIII:jb

cc: Nils R. Douglas, Esq.
cc: Robert Atmore, Esq.

NATIONAL OFFICE: 156 FIFTH AVE., NEW YORK 10010 • (212) YU 9-7530 • CONTRIBUTIONS TO LCDC ARE TAX-DEDUCTIBLE

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130

DEC 2 9 1966

MEMORANDUM TO ALL COUNSEL LISTED BELOW:

✓ Re: No. 23173 - Margaret M. Johnson, et al
-vs- Jackson Parish School Board, et al
✓ No. 23192 - Yvornia Decarol Banks, et al
-vs- Claiborne Parish School Board, et al
No. 23274 - United States of America
-vs- Caddo Parish School Board, et al
No. 23331 - United States of America
-vs- The Board of Education of the City of Fairfield, et al
No. 23335 - United States of America
-vs- The Board of Education of the City of Bessemer, et al
No. 23345 - United States of America and Linda Stout, etc. -vs- Jefferson County Board of Education, et al
No. 23365 - United States of America
-vs- The Bossier Parish School Board, et al

Gentlemen:

Enclosed is a copy of the Court's opinion in the above cases entered this date by the Court.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By G. F. Ganucheau
G. F. Ganucheau,
Chief Deputy Clerk

Enc.
/bwc

Mr. Macon L. Weaver
Messrs. Oscar W. Adams, Jr. and
Orzell Billingsley, Jr.
Mr. Demetrius C. Newton
Mr. David L. Norman
Mr. Maurice F. Bishop
Mr. John C. Satterfield
Mr. Reid B. Barnes
Messrs. Norman C. Amaker,
Charles H. Jones, Jr. and
James M. Nabrit, III

Mr. A. P. Tureaud
Mr. John A. Richardson
Mr. L. Bennett Johnston, Jr.
Hon. Jack P. F. Gremillion
Mr. Alvin J. Bronstein
Mr. Harris David
✓ Mr. Carl Rachlin
Mr. Fred L. Jackson
Mr. William H. Baker
Mr. Robert F. Collins
Messrs. Thomas McFerrin, Sr., Harry
Kron, Jr. and Teddy W. Airhart, Jr.

SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

1/24/66

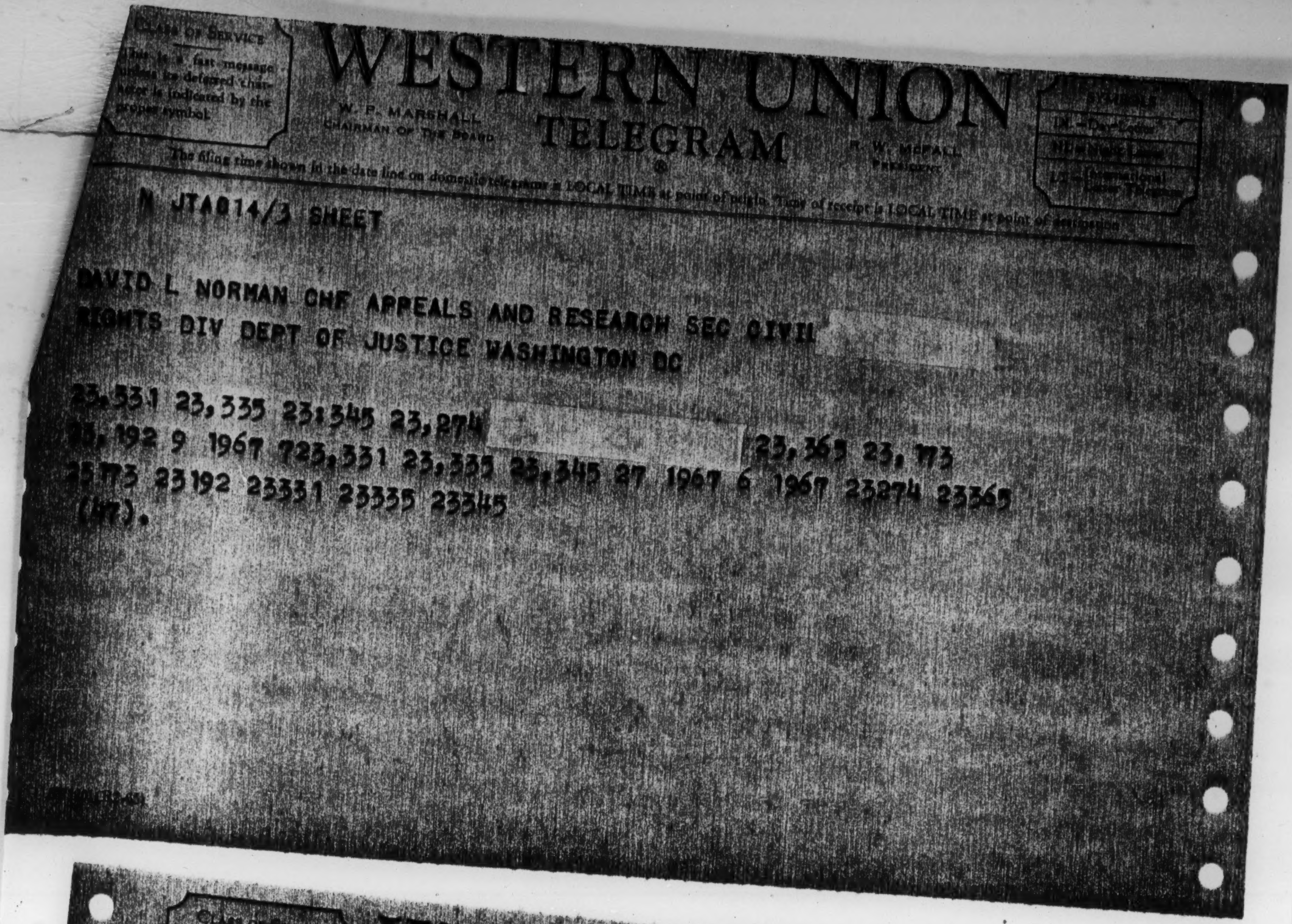
Dear Judy and Steve

Happy new year! I'm sorry that I've been so busy that I haven't had a chance to drop into see you

Contributions are deductible for income tax purposes

■ *president;* Andrew E. Norman ■ *vice presidents;* William S. Ellis, Nannette Sachs ■ *secretary;* Ezra Levin ■ *treasurer;* Shelley Appleton ■ *executive director;* Marvin Rich ■ *leadership development director;* Ronnie M. Moore ■ *legal director;* Carl Rachlin ■ *BOARD OF DIRECTORS;* John P. Allison ■ Robert Ausnit ■ James Baldwin ■ Katrina McCormick Barnes ■ Canon James P. Breeden ■ Dr. Kenneth B. Clark ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ John Henry Faulk ■ Michael O. Finkelstein ■ Doris Freedman ■ Dr. Edward L. Gibson ■ J. T. Harris ■ Claude Heckscher ■ Norman Hill ■ Clarence B. Jones ■ Dr. Archie Lacey ■ Joann List Levinson ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Richard J. Schwartz ■ Elaine Slater ■ Norman Thomas ■ Rowland Watts ■ Pearl L. Willen

490



CLASS OF SERVICE

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WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

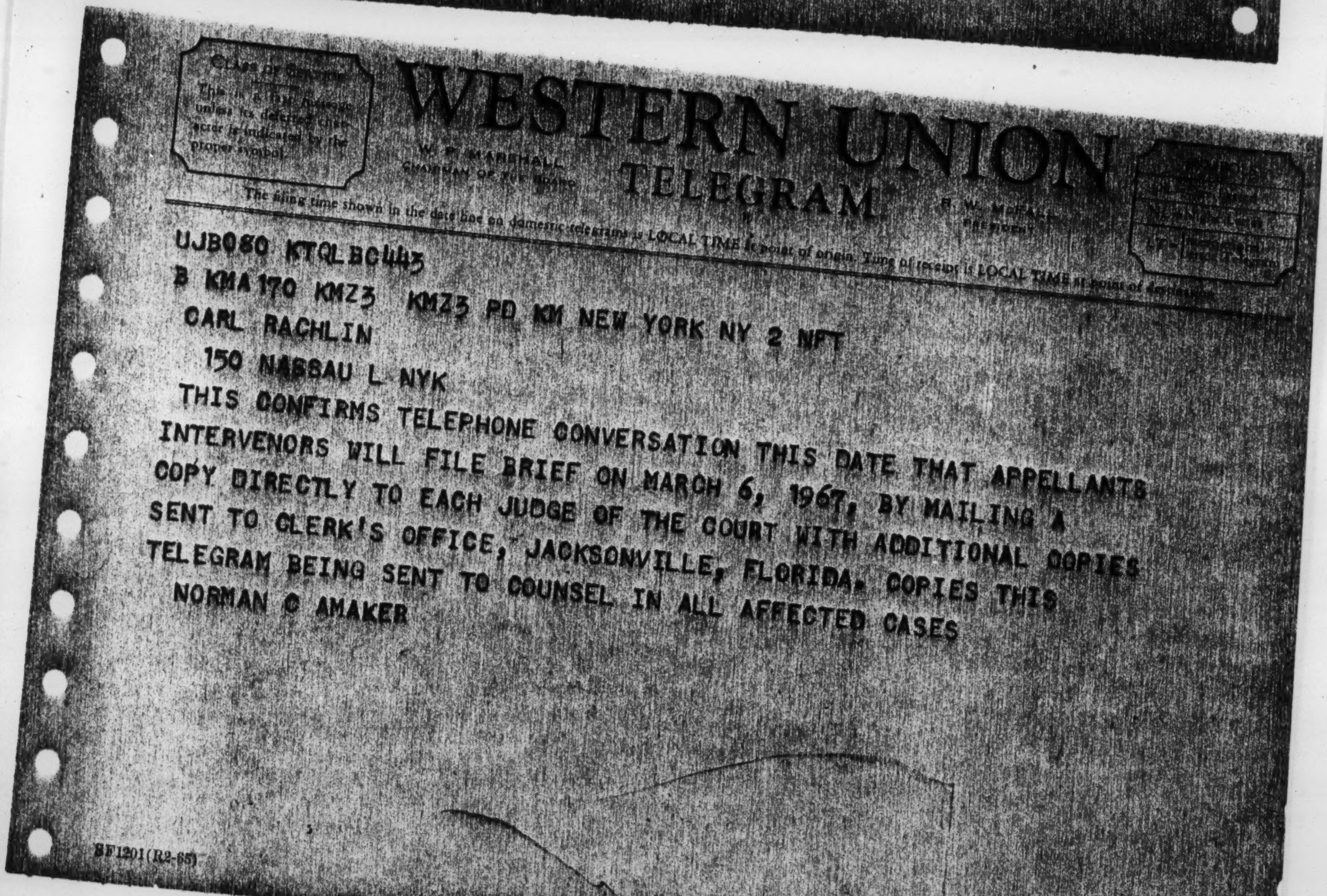
R. W. McFALL
PRESIDENT

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

N JTA814/3 SHEET

DAVID L NORMAN CHF APPEALS AND RESEARCH SEC CIVIL
RIGHTS DIV DEPT OF JUSTICE WASHINGTON DC

23,331 23,335 23:345 23,274
23,192 9 1967 723,331 23,335 23,345 27 1967 6 1967 23274 23365 23,365 23, 773
23773 23192 23331 23335 23345
(47).



CLASS OF SERVICE

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WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

R. W. McFALL
PRESIDENT

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

UJB080 KTQLBC443
B KMA170 KMZ3 KMZ3 PD KM NEW YORK NY 2 NFT
CARL RACHLIN
150 NASSAU L NYK

THIS CONFIRMS TELEPHONE CONVERSATION THIS DATE THAT APPELLANTS INTERVENORS WILL FILE BRIEF ON MARCH 6, 1967, BY MAILING A COPY DIRECTLY TO EACH JUDGE OF THE COURT WITH ADDITIONAL COPIES SENT TO CLERK'S OFFICE, JACKSONVILLE, FLORIDA. COPIES THIS TELEGRAM BEING SENT TO COUNSEL IN ALL AFFECTED CASES

NORMAN C AMAKER

SF1201(R2-65)

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

R. W. McFALL
PRESIDENT

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

WSA011 NBA119 (18)BE087
N JTA014 DL GOVT PD 13 EXTRA JT NEW YORK NY 2 1024A EST [illegible] 2 AM 11 42
CARL RACHLIN ESQ
55 PARK ROW NYK

RE: USA & BOYKINS V. FAIRFIELD BOARD OF EDUCATION, NO. 23,331: USA & BROWN V. BROAD OF EDUCATION OF THE CITY OX BESSEMER, NO 23,335: USA & STOUT V. JEFFERSON COUNTY BOARD OF EDUCATION, NO. 23,345: USA V. CADDO PARISH SCHOOL BOARD , NO. 23,274: USA V. BOSSIR PARISH SCHOOL BOARD, NO. 23,365: JOHNSON V. JACKSON PARISH SCHOOL BOARD. NO. 23,173: BANKS V. CLAIBORNE PARISH SCHOOL BOARD , NO . 23,192

THIS WILL CONFIRM THE TELEPHONE CONVERSATION THIS DATE BETWEEN MR. GANUCHEAU OF YOUR OFFIICE AND MR. NORMAN OF THIS OFFICE REGARDING THESE CASES. AS WE READ THE COURT'S ORDER OF FEBRUARY 9, 1967, SETTING FORTH THE BRIEFING SCHEDULE,

---

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

R. W. McFALL
PRESIDENT

SYMBOLS
DL=Day Letter
NL=Night Letter
LT=International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

N JTA014/2 SHEET

THE GOVERNMENTS BRIEF IS DUE TO BE FILED 7 DAYS AFTER THE FILING BY THE PETITIONERS OF ANY ADDITIONAL BRIEFS, WE UNDERSTAND THAT PETITIONERS' BRIEF IN NOS. 23,331, 23,335 AND 23,345 WAS FILED ON FEBRUARY 27, 1967 AND THAT IS THE DATE WHEN WE RECEIVED OURNCOPY (AND WE HAVE NOT YET RECEIVED APPENDIX A TO THAT BRIEF).

WE THEREFORE PLAN TO FILE OUR BRIEF ON MARCH 6 1967, SINCE THAT WILL LEAVE ONLY A FEW DAYS BEFORE ORAL ARGUMENT, WE WILL, PURSUANT TO MR. GANUCHEAU'S SUGGESTION, AIR MAIL COPIES OF OUR BRIEF DIRECTLY TO EACH OF THE JUDGES OF THE FIFTH CIRCUIT AND THEREBY AVOID DELAYS. WE ARE SENDING A COPY OK THIS TELEGRAM TO ALL COUNSEL IN NOS. 23274, 23365, 23173, 23192, 23331, 23335 AND 23345

SEDFRE

Box 34
Folder 20

State Historical Society of Wisconsin

Please Retain Original Order

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX
- -X

BONNIE BARROW,

Petitioner,

-against-

SIDNEY RODWIN and BRONX PARK SOUTH
REALTY CO., INC.,

Respondents.

- -X

ORDER TO SHOW CAUSE

Upon the annexed petition of BONNIE BARROW, sworn to the 6th day of June, 1967, together with the exhibits thereto annexed and upon all the previous papers and proceedings heretofore had herein; and sufficient reason appearing therefore,

LET SIDNEY RODWIN and BRONX PARK SOUTH REALTY CO., INC. show cause at Part II of this Court, to be held in and for the County of Bronx, at the Courthouse, 851 Grand Concourse, Bronx, New York, on the 13th day of June, 1967, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered, pursuant to Sections 34, 35 and 51 of the New York Rent Control Laws and pursuant to the CPLR, granting a protective order vacating and staying the precept and petition, final order and judgment entered by the respondents, SIDNEY RODWIN and BRONX PARK SOUTH REALTY CO., INC., against the petitioner, BONNIE BARROW, and reducing the rental on Apartment No. 3 D, at 932-934 Bronx Park South, Bronx, New York, to the sum of $1.00 per month until such time as the present existing violations at that premises have been corrected and for such other, further and different relief as to this Court may seem just and proper, and it is

ORDERED, that pending the determination of this proceeding the respondents and/or their agents are hereby stayed from taking any further steps or proceedings to remove the petitioner from Apartment 3 D at 932-934 Bronx Park South, Bronx, New York.

Sufficient reason appearing therefor, let service of a copy of this order to show cause and petition upon the respondents at their office at 349 East 149th Street, Bronx, New York, on or before the 7th. day of June, 1967, be deemed sufficient.

ENTER

Judge of the Civil Court

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX
-------------------------X

BONNIE BARROW,

Petitioner,

-against- **PETITION**

SIDNEY RODWIN and BRONX PARK SOUTH
REALTY,CO,, INC.,

Respondents.

-------------------------X

The petition of BONNIE BARROW respectfully sets forth and alleges:

FIRST: That your petitioner is the Tenant of premises known as 934 Bronx Park South, Bronx, New York, Apartment 3 D, pursuant to the terms of a written lease wherein and whereby the Tenant is to pay to the Landlord the sum of $110.00 per month.

SECOND: That on or about February 1, 1967, your petitioner paid to the respondents the sum of $220.00 representing the rent for the month of February together with one month's security on the aforesaid apartment. Further payments were made by your petitioner for the months of March, 1967 and April, 1967, said payments being made on February 17, 1967 and April 7, 1967, respectively.

THIRD: That upon taking possession of the aforesaid premises, your petitioner discovered that there were certain conditions existing within the said premises which made the apartment untenantable. Shortly after taking possession of said premises, these conditions were brought to the attention of the respondents.

FOURTH: That the respondents failed to take any action whatsoever to alleviate these conditions during the months of March and April, 1967, when your petitioner had paid to them the rental due upon the aforesaid premises.

FIFTH: That thereafter, and during the month of April, 1967, your petitioner filed a complaint with the Department of Buildings of the City of New York. On the 1st day of May, 1967, an inspection was made of the aforesaid premises and a report was made as to the conditions which existed and the violations which had been discovered. A copy of the preliminary report of the Department of Buildings, together with evidence of payment of the rent as heretofore mentioned is annexed hereto and marked Exhibit "A".

SIXTH: That thereafter, and during the month of May, 1967, your petitioner determined to vacate the apartment due to the fact that the respondents had failed to abide by their agreement of leasehold and to deliver and maintain the apartment in a condition suitable for tenancy.

SEVENTH: That due to the failure of the respondents to abide by their leasehold agreement your petitioner did not forward any monies representing the rent for the month of May, 1967, due to the fact that the respondents were already in possession of the security which I had tendered for the rental for the first month.

EIGHTH: That thereafter and in the latter part of May, 1967, your petitioner attempted to obtain other lodgings. A new apartment was found but, at the last moment, my application was turned down due to the fact that the new landlord had spoken with the respondent, SIDNEY RODWIN, and the latter had informed my new landlord to be that I was an undesirable tenant. I myself called MR. RODWIN and represented myself as a prospective landlord to determine the validity of the alleged statements of this new landlord that I had been given an unsatisfactory recommendation. MR. RODWIN made comments to me, while my identity was unknown to him, which were totally untrue and malicious. A report of this situation has been made to the New

York City Commission on Human Rights and I have been informed, and verily believe, that the Commission has found reasonable cause and has initiated a proceeding in the Supreme Court of this State against the new landlord to prevent him from renting this apartment to any other person.

NINTH: That I had not previously contested the notice of eviction since it was my intention to remove from these premises. Now, however, as I find that I am unable to find new accommodations for myself and my children, I am contesting this matter.

TENTH: That as a result of the foregoing, and after having learned of my predicament wherein I was losing my old apartment and, due to the statements of my old landlord and the respondent herein, SIDNEY RODWIN, I would be unable to find new accommodations, I tendered to the respondent, SIDNEY RODWIN, a certified check in the amount of $110.00, dated June 2, 1967, representing the rent for the month of June, 1967, or, in the alternative, representing rent for the month of May, 1967, and allowing my security to be used as the rent for the month of June, 1967.

ELEVENTH: That I have never committed any acts to cause MR. RODWIN to consider me to be an undesirable other than to complain of the fact that there were existing in my apartment certain conditions which made it impossible for me and my family to continue to live there with the enjoyment and convenience which I was guaranteed pursuant to the lease which we had signed.

TWELFTH: That no previous application for this or similar relief has heretofore been made to any Court or Judge.

WHEREFORE, your petitioner respectfully requests, that an order be made vacating the precept and petition, final order and judgment which has been entered against me and which would cause my removal from the aforesaid premises together with the further additional relief of having the rental on Apartment 3 D set at the sum of $1.00 per month until such time as the landlord has corrected the conditions existing in the said premises and finally that your petitioner be allowed to remain on the premises, subject to paying the rental set by this Court until such time as the New York City Commission on Human Rights has been able to obtain a determination from the Supreme Court of this State as to whether I shall be entitled to obtain the new apartment which I have made application for.

Dated: Bronx, New York
June 6, 1967.

Bonnie Barrow

RICHA[illegible] [illegible]ARLOW
Notary Publi[illegible] [illegible] York
No [illegible]
Qualified i[illegible] [illegible] County
Commission Ex[illegible] [illegible] .968

Jan. 30, 1967

Received from Bonnie Barrow \$10.00 deposit Apt. 932 Bx Pk. So 3D

D. Marresainte

(April)
Rent for Apt 3D
932 Bronx, Pk. So.

No. 002

April 7 19 67 1-12/210

PAY TO THE ORDER OF Mr [illegible] \$110.00

One Hundred [illegible] and 0/0 DOLLARS

CHEMICAL BANK NEW YORK TRUST COMPANY
174TH STREET & BOSTON-ROAD
23 BRONX, N. Y.
1-2 NEW YORK

Bonnie Barrow
932 Bx Pk So
apt 3D

0210 0012 023 517492 0000011000

Rent

M Bonnie Barrow Apt. 3D

932 Bx Pk. So. New York, Feb. 17, 1967

To rent in advance for month Mar 1967

Balance 110 00

Received Payment, TOTAL \$110 00

Marresainte

Rent & Security

M Bonnie Barrow Apt. 3D

932 Bx. Pk So. New York, Feb. 1, 1967

To rent in advance for month Feb 1967

Balance \$220 00

Received Payment, TOTAL \$220 00

Marresainte

Form No. 194 PR (Rev. 6/56)-90M 114

THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS

№ 120545

CHARLES G. MOERDLER
Commissioner

PRELIMINARY REPORT

TENANT'S COPY

PREMISES 934 Bronx Park So BOROUGH BX DATE 5/1?/67

S. RODWIN
Owner
249 E. 149 St
Address
BX NY
City

Tenant's Name BARROW
Story 4 Apartment No. 3D

The following conditions were reported:
leaky tray wash basin leaky faucet
[illegible] frame of entrance door
broken [illegible] broken window glass front
room leaky toilet-

111
Badge No.

NOTE: This report is subject to review and verification before violations are issued. This is not a legal document.

Rent

BONNIE BARROW
932 BRONX PARK SOUTH, APT 3D
BRONX, N.Y. 10460

125

CERTIFIED
JUN 2? 1967
CHEMICAL BANK NEW YORK TRUST COMPANY
PAYABLE ONLY AS ORIGINALLY DRAWN AND WHEN PROPERLY ENDORSED
AUTHORIZED SIGNATURE

1967 $\frac{1-12}{210}$ 23

PAY TO THE ORDER OF Sidney Rod[illegible] $110.00

One Hundred & [illegible] DOLLARS

Chemical New York
CHEMICAL BANK NEW YORK TRUST COMPANY
1702 Boston Road
(174th Street)
Bronx, N.Y.
33

Bonnie Barrow

⑆0210⑈0012⑆ 023⑈58749

M Barrow
932 Bx Pk So Apt. 3 D
New York, May 21 1967

FINAL NOTICE
DISPOSSESS FOLLOWS

To rent in advance for month, May 1 1967		
Balance	110	-
Received Payment, TOTAL	110	-

30 January 1969

Bonnie Barrows
1301 Boston Post Road
Bronx, New York

Dear Bonnie:

Enclosed is the form for the copywright.

1. You must sign it on the back page where the red bond is.

2. I need three copies of the poster and card.

3. Please send a check for $6.00 made to the order of "Register of Copywright."

Since in the copywright notice you used initials which is permissible, your name must also appear somewhere on the article.

Regards,

James M. Spitzer, Jr.

JMS/BG
Encl.

RE: copyright

Dear Bonnie:

published 1/8/69
distn 1/6/69

J. Burgos
949 E 180 St
NY

S. H. B. B. 1969.
Solomon Herbeat, Bonnie M. Barrow } 1301 Boston Rd - Bx

1. SOLOMON HERBERT and
Bonnie M. Barrows (S.H.B.B.)
1301 ~~BROAD~~ BOSTON ROAD
BRONX, N.Y.

2

3

4. Solomon Herbert and Bonnie M.
Barrows (S.H.B.B.) — U.S.
~~1301~~
YES X Address: 1301 Boston Road
Bronx NY

5. a) JANUARY 3, 1969
b) U.S.A.
~~c)~~

8 M. JAMES SPITZER, JR.

9. M. JAMES SPITZER, JR.
164 MADISON AVE., 4th FLOOR
NY NY 10016

MSS SEDFRE Basilico, John vs Callendar, Herbert et al
546 & State of New York vs Callendar, Herbert et al June, 1963 - 1967

Box
Folde

State Historical Society of Wisconsin

Please Retain Original Order

Prepared by Marvin Moses Karpatkin 9/10/63

Re: People v. Callender, Pogrow, Posner, Sanders, et al

Notes for Defense of Disorderly Conduct Prosecution under Section 722(3) of New York Penal Law

The charge is that the defendant(s) committed the offense of disorderly conduct in violation of Section 722, Sub-division 3 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant(s) did, while acting with others place himself and sit in the driveway leading to the Parking lot of the White Castle restaurant preventing car from entering and also interfering flow of traffic. That defendant, refused to obey officer when advised of the violation of that above statute and refused to leave the said driveway.

POINT I

THE PEOPLE CANNOT PROVE THE FACTS ALLEGED IN THE COMPLAINT.

1. The defendant CALLENDER was on the curb and not in any driveway.

2. The defendants POGROW and SANDERS (and others?) were sitting in an exit; consequently they were physically unable to prevent cars from entering; and they concededly permitted cars to exit.

3. No patrons were in fact prevented by defendants from entering the White Castle premises.

   (a) One or more automobiles drove into the parking lot by going over the curb.

   (b) There was no interference with any pedestrian traffic.

(c) Many patrons could and did park their cars elsewhere and then enter on foot.

(d) In most instances the police waved the passing cars on and did not give them a choice of entering or not entering.

(e) Many of the passing cars saw the picketing and the sitting down in the drive and voluntarily chose not to go in.

(f) In any event the people have the burden of proof of showing that someone who nevertheless wanted to utilize the White Castle facilities was physically prevented by the acts of the defendants.

4. Defendants were never expressly directed by the police to move on or otherwise face arrest.

POINT II

THERE IS NO DISORDERLY CONDUCT AS A MATTER OF LAW.

1. Disorderly conduct must involve either an intent to commit breach of the peace or circumstances where a breach of the peace might be occasioned. The complaint is in the conjunctive and cannot be proof of both intent and likelihood, regardless of intent.

2. Obviously there was no intent to commit breach of the peace.

(a) The absence of any force or violence is conceded.

(b) Defendants' philosophy and attitude of non-violence.

3. Under the circumstances of defendants' conduct the likelihood of a breach of the peace occurring was so remote that there is no disorderly conduct as a matter of law.

(a) No violence conceded.

(b) Philosophy of non-violence.

(c) More than adequate police protection at the scene.

(d) Not just an ordinary fluid crowd or congregation but the defendants were engaged in a disciplined, dignified demonstration.

(e) To the extent that there was any intention it was clearly defendants' intention to avoid a breach of the peace.

4. There was obviously no interference with the general flow of traffic and this part of the complaint must fail.

5. Even if the people prove an intention to block the entrance of vehicular traffic through these driveways, under the circumstances this fact by itself does not occasion a breach of the peace, and therefore does not amount to disorderly conduct.

6. Section 722(3) involves congregation on a public street and refusal to move on when ordered by the police. A refusal to move is not ipso facto disorderly conduct, People v. Carcel, 3 N.Y. 2d. 113. There was no crowd, nor was there any crowd or congregation, as is required for a conviction under the statute, People v. Lo Vecchio, 56 N.Y.S. 2d 354 (no congregation such as to amount to breach of the peace unless three or more persons present; here there were no more than two at each driveway other than police).

7. The essence of subdivision 2 of Section 722 is obstruction of others. Here, for the reasons indicated above, even if the charge should be changed from §722(3) to §722(2), there was no obstruction.

8. Conduct previously orderly cannot be rendered disorderly merely by changing the picket line from a moving situation to a stationary situation. Picketing here had been going on for weeks, admittedly without any disorderly conduct on the part of the pickets; these additional acts of sitting down in the driveways did not change the character of the picketing to disorderly conduct.

9. The disorderly conduct statute was not and is not intended to cover a situation such as this.

POINT III

DEFENDANTS' ACTIVITY IS CONSTITUTIONALLY PROTECTED.

1. In effect, this was legally equivalent to standard, peaceful

picketing and an extension of the picket line. Picketing need not be mobile, can be stationary, so long as non-violent.

2. Even if the picketing is in violation of the property rights of White Castle on balance the First Amendment rights of the defendants are constitutionally entitled to more weight. Cf. Marsh v. Alabama.

3. There is a constitutional right to protest against illegal racial discrimination. It is against the law of the State of New York to racially discriminate in hiring, Penal Law §700; §220-e of Labor Law. Supreme Court has held that there is a constitutional right to protest, via a sit-in, against unconstitutional racial discrimination denying equal accommodations at lunch counters, etc, Edwards v. South Carolina and other cases at 83, Supreme Court 680, et seq. It is equally valid to protest against discrimination in hiring as in discrimination in public accommodations. And there is certainly no difference between de jure racial discrimination in a Southern community, and de facto racial discrimination in the North. If the defendants can prove that there was a rational basis, a legally valid purpose, to their demonstration, e.g., the elimination of illegal racial discrimination in White Castle's hiring practices, they had as much right to so demonstrate as if White Castle had a sign on its premises stating "We do not hire Negroes."

4. There is perhaps an even greater right to peacefully protest against illegal racial discrimination where the State has failed to enforce its policy, reflected in Penal and other laws, to eliminate such discrimination.

Re: People v. Callender, Pogrow, Posner, Sanders, et al

Notes for Mock Trial

1. The witnesses for People:

    (a) Arresting officer
    (b)

2. Witnesses for the defense:

    (a) Defendants
    (b) Expert witness on White Castle employment practices.
    (c) Manager of White Castle.
    (d) Staff member of City Commission on Human Rights.
    (e) Police Inspector or other high police official.
    (f) One or more character witnesses.

Cross examination of police officer:

1. Ask all other police officers to be excluded during cross examination.

2. Number, rank and category of all police officers present to establish ability to control crowd and cope with situation; special significance of TPF.

3. Any or all instructions given with regard to arrests.

4. Any instructions given with regard to discrimination and arrests of violators of discrimination laws.

5. Arresting officer's record with disorderly conduct arrests and convictions; establish either (a) difference between those situations and these; or (b) total inexperience.

6. Establish absence of any complaints from either White Castle or prospective patrons.

7. Establish absence of any violence or force.

8. Establish orderly, dignified, disciplined nature of demonstration.

9. Establish history of peaceful picketing at White Castle without incident until these arrests.

Examination of defendant:

1. Peaceful nature of picketing.

2. Purpose of picketing.

3. Organized, disciplined, dignified nature of protest.

4. Philosophy of non-violence.

5. Establish that Callender, Pogrow, Sanders and perhaps others could not conceivably have prevented any entrance.

6. Introduce photographs and/or charts showing location of picket lines, location of driveways, exits and entrances.

Examination of expert witness on White Castle Employment practices:

Katto

1. Nature of survey made by CORE or whoever made it of employment practices at all White Castle restaurants in Bronx.
2. What this survey showed, e.g., number of restaurants, total number of employees; total number of Negro and Puerto Rican employees.
3. Same for this particular installation.
4. That White Castle was confronted with these facts and did not deny them.
5. That following picketing and arrests, negotiations were instituted under sponsorship of CCHI.
6. That these negotiations resulted in signed agreement that White Castle would hire more Negroes and Puerto Ricans.
7. Facts of agreement. Introduce copy of agreement.
8. That following agreement picketing and other demonstrations were discontinued.
9. That White Castle is apparently trying in good faith to live up to agreement and indications of hiring since then.

Examination of White Castle Manager:

1. No violence or disorder.
2. No complaint made by White Castle to police about trespass or anything else.
3. That picketing in fact stopped after agreement was reached.
4. Cars allowed to leave
5. Other parking possible – No i/ference w/ pedestrian traffic
6. Same 4 its
7. No of police

① No of pickets

When

Examination of member of CCHR:

1. As many facts as can be gotten in concerning their role, intervention, negotiations and arrival at written agreement.

Arg – Serious Evils of ~~picketg~~ demonstratn
– ~~[illegible]~~ Reasonableness of actn
– Constl right to protst

Examination of Police Commissioner: (Maybe)

1. Establish the absence of arrests, warnings or other affirmative actions in enforcement of the law against discrimination.

Character witnesses:

1. Reputation of defendants for truth and veracity.

2. Try to get in as part of reputation and character, their sincerity and dedication to equality and enforcement of the law dealing with equality.

Other documentary evidence:

1. Copies of relevant Supreme Court decisions.
2. Any official report there might be showing the existence of racial discrimination either in the restaurant industry in general, or White Castle in particular.

THE CRIMINAL COURT OF NEW YORK

PART 1C   NEW YORK COUNTY

- X

THE PEOPLE OF THE STATE OF NEW YORK   :   DOCKET NOS. C9833
9834
9835

--against--   :

HERBERT CALLENDER, WALTER FLESCH,   :
JOEL MEYER, GE8-6584   **ASSAULT**
DEFENDANTS   :

- X

ON: June 3, 1964

AT: 100 Centre St.

BEFORE:

HON. NEAL P. BOTTIGLIERI

Appearances:

For the People:
Gerald Ryan, Esq.
Assistant District Attorney
New York County
BE3-7850

For the Defendants:
John E. SILVERBERG, ESQ.
15 Park Row
New York 38, N.Y.
BY: Frederick C. Hayes, Esq.
545 5th - TN7-7130

Harold M. Lustig
Official Court Reporter

Bridgeman: R. Corkum

COURT OFFICER: Docket numbers C9833, 9834 C9835, Herbert Callender, Walter Flesch, Joel Meyer, charged with Assault. The defendants are represented by John E. Silverberg, 15 Park Row, New York, by Frederick C. Hayes, 545 Park Avenue.

MR. HAYES: Your Honor, at this time I would like to state for the record that the defendants have requested me to continue with a hearing. I also would like the record to show that I have discussed the case with the defendants at the Court's recess, approximately ten minutes, and several other cases were called. I have familiarized myself with the case at that time.

JUDGE BOTTIGLIERI: Ready for a hearing?

MR. RYAN: The people are ready.

MR. HAYES: The defendants are ready.

MR. RYAN: The people call John Basilico.

JOHN BASILICO, being called as a witness on behalf of the people, being first duly sworn, testified as follows:

COURT OFFICER: Name, address and occupation?

THE WITNESS: John Basilico, 43-38 39th Place, Long Island City, Plumber.

DIRECT EXAMINATION BY MR. RYAN:

Q Mr. Basilico, on May 14, 1964, at about 4:30 PM, were you at 112 4th Avenue, County of New York?

A Yes, Sir.

Q And, at about that time, Sir, did you see these three defendants, Herbert Callender, Walter Flesch, Joel Meyer?

A Yes, Sir.

Q Will you tell the Court what, if anything, occurred at about that time?

A Well, I was trying to go up to my union hall on the first floor. As I opened the door there - - -

JUDGE BOTTIGLIERI: What union hall?

THE WITNESS: The plumber's union, Local number two.

JUDGE BOTTIGLIERI: What's the address there?

THE WITNESS: It's 112 4th Avenue.

A (Cont'd) And, as I opened the door, there was a steel door and a group of people inside and these three fellows were in front and he says here is a plumber and they slammed the door right on my arm.

LIE!

MR. RYAN: Indicating the left forearm.

A (Cont'd) Left forearm and I says open that door, you're breaking my arm, I shouted, and they justpaid no attention.

JUDGE BOTTIGLIERI: Were you able to see

who was against the door?

THE WITNESS: The Three fellows right here. They were pulling in and my arm was in the door and I was trying to pull out and yelling you're breaking my arm. I yelled several times after awhile, but, I yelled loud enough that the police officers heard it and they came over. I asked them to release the door and theyrefused to release the door and the police were pulling the door with them and sort of playing tug of war with my arm and finally the police officers kept yanking and they yanked the door open and I asked for the three fellows to be arrested because I pleaded with them - - I asked them to open the door, my arm was in the door; they were breaking my arm. As I said before, they just paid no attention.

MR. HAYES: I object to they paid no attention.

JUDGE BOTTIGLIERI: Strike out that part.

Q Sir, would you describe the entrance, these doors, this door?

A It's a steel door, glass plated. One of these heavy steel doors. As I walked in there they had - - in other words to push out they - - - they were pulling that in and they had my arm in there.

Q In other words to enter this door you would pull the door?

A I have to pull the door out and they were pulling in.

Q I this one door or a double door?

A This is a double door there.

Q And, does each door have glass in it?

A That's right.

Q Can you descibe, approximately, the area of glass?

A I would say about two-half feet or thirty inches or three foot door offhand. I couldn't tell, I haven't taken measurements of it.

Q In each door, Sir, both doors together?

A I imagine both doors together.

Q And --- - - -

A (Cont'd) I walked up to that union hall I would say, maybe, a hundred times since we are downthere, but, offhand - -

JUDGE BOTTIGLIERI: Are you able to see through the door?

THE WITNESS: Yes, Sir.

Q And, you saw these three defendants pulling on the bar - - -

A Pulling a bar and pulling in when my arm was there. I pleaded with them, you're breaking my arm and shouted loud enough, but, they never paid any attention to it until the police - -

Q And, this was about 4:30 in the afternoon?

A Yes.

Q Now, Sir, approximately how long did you have your arm in that door?

A Well, I would say to me it seemed like a good two minutes.

JUDGE BOTTIGLIERI: Didn't seem like a couple of hours?

THE WITNESS: I would say a good two minutes. I would say a good two minutes until the police officers had to come over and release that door. When the police officers asked them to open this door, they still refused.

MR. HAYES: I object to the complainant saying that they refused.

JUDGE BOTTIGLIERI: Just a minute. Proceed.

Q Now, during the time that you were shouting, were you shouting in the space in which your arm was inserted in the door?

A Well, here is the door, here is the door and my arm was caught in that door. I had to shout for them to hear it.

MR. RYAN: Indicating the extent of the left arm.

A (Cont'd) That's the left arm, there is the door. My arm in the door and I shouted. These three fellows, right here, and I shouted to them to please open that door, you're breaking my arm and finally I shouted loud enough that the police officers came , as I said, to the rescue.

Q As a result of this, Sir, was your arm injured?

A Yes. I went to the doctor the following night and the doctor - - my arm was bruised and he told me to take two weeks offs. I had it x-rayed.

MR. HAYES: I object to what the doctor said.

JUDGE BOTTIGLIERI: You didn't work for two weeks?

#p.8

THE WITNESS: NO, Sir, still out of work.

MR. HAYES: I object to him - - -

JUDGE BOTTIGLIERI: Overruled.

MR. HAYES: It hasn't been ascertained whether he 's working at this time.

JUDGE BOTTIGLIERI: What were the injuries?

THE WITNESS: The injury to my arm was bruises in both spots.

MR. RYAN: Indicating the left arm.

THE WITNESS: My arm was caught in the door. As the police officers opened that door, I tried to pull my arm again and they pulled it back; so my arm was injured in both places.

MR. RYAN: Indicating two places on the ~~the~~ left forearm.

JUDGE BOTTIGLIERI: How many times did you go to the doctor about the arm?

THE WITNESS: Three times, Sir.

MR. RYAN: I have no further questions.

JUDGE BOTTIGLIERI: Cross examination.

CROSS EXAMINATION BY MR. HAYES:

Q Are you presently working?

A Yes, Sir. ≠ p.7

Q Were you working at the time you were outside the union hall?

A Yes, Sir.

Q Did you leave work at any time? Where were you working?

A Where was I working?

Q Yes.

A Up in the Bronx.

Q At this particular time were you working in the Bronx?

A That's right.

Q Was your job suspended or did you walk off from the job in the Bronx?

A My job wasn't suspended. I was told I was going to be laid off Friday.

Q So, actually, when you say you were working, you were not working this particular day that you arrived at the union hall, is that true?

A I was working the day I arrived at the union hall.

Q When you stated you walked off from the job -- --

A I did not walk off the job. I walked off the job when the time/came at 3:30. We get off a quarter after three, we get off the job.

Q Is the job you were working on, the job that is in question here for the reason that there was pickiting going on?

MR. RYAN: Objection, Your Honor. This is totally irrelevant.

MR. HAYES: It's pertinent from the fact it was that day, my understanding is,that theplumbers walked off the job on that day.

JUDGE BOTTIGLIERI: What would that have to do with the alleged assault on this complainant?

MR. HAYES: As it would be disclosed later, Your Honor, I think it's relevent, very much so.

JUDGE BOTTIGLIERI: Objection sustained. Let's stick to the question of the assault.

Q You were working on a different job?

A Yes, up in the Bronx.

Q What was your reason for going to the union hall?

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Sustained

Q You were on the union hall?

A That's right.

Q And, you wanted to go into the union hall, is that right?

A That's right.

Q What was the purpose for going in at that time?

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Sustained. Did you have business there?

THE WITNESS: Yes, Sir.

Q Did you have knowledge that the office was open or closed?

A I was told that the office was open.

Q You were told by whom?

A Yes, Sir, by a union plumber.

Q By a union plumber?

A Wednesday it was told to me that the union hall was open and that's the reason why I went down Thursday.

Q What was your purpose - - what was your business at the union hall?

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Sustained.

Q At the time you arrived at the hall, did you see police officers outside theunion hall?

A There was pickets lined outside the hall and as I said I had been on picket lines myself. I didn't think there was anything wrong with these pickets. As I walked by the pickets, the pickets let me go by.

MR. HAYES: Objection.

A (Cont'd) I went past.

Q Did you see any plumbers outside the hall at this time?

A No, Sir, not there.

Q You didn't see any plumbers outside the hall?

A No.

Q When you accosted the building, did you have occasion to speak to police officers?

A Before I went into the union hall?

Q Before you attempted to go into this union hall?

A No, Sir.

Q Was there police officers near the door?

A I couldn't tell you. I didn't pay any attention to it. To be honest, there might be, might not be. I would by lying if I say one way or another.

Q How close was the nearest officer, to your knowledge?

MR. RYAN: Objection.

A I couldn't tell you.

JUDGE BOTTIGLIERI: Overruled.

Q Have you gone to the union hall prior to this, Thurday, May 14th?

MR. RYAN: Objection.

Q Did you go to the union hall prior to May 14th?

A About a month ago, I guess, I was there or two months.

Q You didn't attempt to go to the union hall at any time during the picketing?

A No, Sir.

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Overruled.

Q And, this was your first occasion there. Now, you said they allowed you to enter the building. You had to push the door?

A Open.

JUDGE BOTTIGLIERI: Pulled.

Q And, which door, which direction does the door open? There is a door here on the wall in the courtroom. I would like the record to show - - would this be the same - - -

A Nobody would be on this side.

Q The door opens from left to right?

A That's right. It opened this way, so my arm was in this way.

Q When you usually enter the door you stick your arm in the door or do you try to open the door and put your body - - -

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Sustained.

MR. HAYES: Your Honor, the District Attorney has mentioned the fact there was a unprovoked attack. Now, it depends upon how the complaining witness here tried to get in the door. This is provocation or not provocation.

JUDGE BOTTIGLIERI: What provocation can there be, Counselor?

MR.HAYES: It depends. He can be putting his arm in the door to hit somebody. I'm not saying this happened.

JUDGE BOTTIGLIERI: Ask him the question. Did you attempt to strike anyone behind that door?

THE WITNESS: No, Sir. I'd be a fool if I tried to.

Q If you're a fool even to try to strike someone, why would you try to enter the place after the door was - - -

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Sustained.

Q Is it your usual way of entering into a door to open, pull first - - withdraw the question. Which hand did you open the door with?- - - withdrawn.

A I don't know. I gues an ordinary door you open the door, you start to walk in. You ask me if I walked in head first or arm first, I can't tell you.

Q Please tell the witness just to answer the questions. Are you lefthanded or righthanded?

A Righthanded, Sir.

Q When you arrived at the door, you reach for the door righthanded?

A Righthanded and walk in this way.

Q How far did you get it open before you walked in?

A I got the door opened enough for me to start walking in. The first thing they say, " He's a plumber." That's all I heard and the door slammed and before I had a chance, my arm was caught in the door.

MR. RYAN: Indicating, again, the left forearm.

Q Was the door partially opened whenyou approached the door or was it closed tight?

A That I couldn't answer to be honest.

Q It could have been open, is that true?

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: He doesn't know.

A I don't know.

Q It could have been closed?

A I don't know. I don't remember.

Q When you approached the door you attempted to open it andyou stuck your left arm in the door?

A I did not stick it.

JUDBE BOTTIGLIERI: He opened the door and started to walk in and the door slammed on him and his arm got caught.

Q Was anybody standing in this door when you attempted to open the door the first time?

A On the outside or inside?

Q On the outside. Was there anybody standing right at the door?

A No one standing outside the door.

Q Inside the door?

A Inside the door, yes; there was about fifteen or twenty people in the hallway or more.

Q Could you identify all of those fifteen or twenty people in the hallway or anyone of them?

A Identify them- - - -

MR. RYAN: Objeetion.

A No, I just identified the three holding that door when I asked them please open that door or my arm would be broken.

Q Was there any lettering on the door?

A As I said before, I walked up that union hall over a hundred times, I wouldn't know.

Q Is there any lettering on the door to your knowledge?

A Offhand I don't think so.

Q Is there anything in the door, a sheet of paper on the door, anything?

A I don't think so.

MR. RYAN: I object, it's irrelevant.

Q Was there anybody with their back to the door when you approached the door?

A No, Sir.

Q Did the police officers attempt to stop you from going in?

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Overruled. Did anybody try and stop you from going in?

THE WITNESS: No, Sir.

Q Did they ask you what your purpose was of going into the building ?

A No, Sir, because, Your Honor, - - -

Q Yes or no?

A No, Sir.

Q And, at the time you arrived at the union hall, you stated - - -

JUDGE BOTTIGLIERI: Counselor, is it your position this man had no right to go into the building?

MR? HAYES: My position is this, Your Honor, that the union hall was closed and it was in the newspapers.

JUDGE BOTTIGLIERI: Who closed it? Who closed this union hall?

MR. HAYES: The officers of the union would not cross the picket line to enter in the building and this is common knowledge of all the newspapers and common knowledge of all the plumbers of Local two.

JUDGE BOTTIGLIERI: Was this any legal right to estop anybody from going into this building?

MR. HAYES: Your Honor knows it's a public building. I would like to state this: I knew nothing of this case before yesterday and I certainly read about it in the newspaper, none of the union members entering in the hall.

JUDGE BOTTIGLIERI: Anything illegal about entering that building, Counselor? If there is, then put it into evidence.

MR. HAYES: No, nothing illegal about

entering the building, except, provocation.

JUDGE BOTTIGLIERI: Did the complainant have the right to go into the building?

MR. HAYES: Not unless he provoked somebody in the building or incite a riot.

JUDGE BOTTIGLIERI: Incite a riot?

MR. HAYES: Yes, Your Honor.

JUDGE BOTTIGLIERI: So far all I've heard he's a union member, he was going down to the union hall. No evidence he was attempting to incite a riot.

MR. HAYES: Well, there is no evidence of that, but, Your Honor asked me about the other matters pertaining - - - it's my feeling - - -

JUDGE BOTTIGLIERI: All I asked you if there is any illegality in his entering this building?

MR.HAYES: No, Your Honor.

JUDGE BOTTIGLIERI: All right.

MR. HAYES: No trespass for a person to enter into the building.

JUDGE BOTTIGLIERI: Proceed.

MR. HAYES: Under the circumstances where there is police officers outside the building, I certainly would like to think that I would be cautious about entering a building if I saw police officers, pickets; I certainly would inquire as to what was going on in there. It's common knowledge.

JUDGE BOTTIGLIERI: Common knowledge as to what?

MR. HAYES: Before anyone would enter a building if they saw - - -

JUDGE BOTTIGLIERI: Counselor, proceed with your questions.

Q You saw many people in the lobby prior to the time - - I mean prior to your entering the building?

A A number of people in the building.

Q In the lobbyof the building?

A Inthe lobby of the building.

Q Now, did you have knowledge that there was pickets outside of the building and there were pickets also inside the lobby sitting in to prevent union members from entering into the hall, do you have any knowledge of that?

MR. RYAN: Objection to the form of the question.

A No, Sir.

Q Did you read the newspapers as to when the people were sitting in at the union hall?

MR. RYAN: Objection.

JUDGE BOTTIGLIERI: Sustained.

Q Were you notified by the union that there were pickets in the hall?

A No, Sir.

Q You had no knowledge that there were pickets in or around the building prior to you going into the building?

A I seen pickets outside of the building and as I said, I walked up to the union.

Q Prior to this day, did you know there were pickets outside?

A No, Sir, I haven't been down there.

JUDGE BOTTIGLIERI: Would you attempt to state that the pickets had the right to be in the hall - - - wait a minute, I'm talking about a legal right, let's not go into morals. I'm talking about a legal right not a moral right.

MR. HAYES: Yes, I would say so.

JUDGE BOTTIGLIERI: They had a right?

MR. HAYES: Yes. The owner of the building made no charges against the defendants herein to remove them from the building. He has a legal right to remove if he feels he has this legal right. If he wanted to do it, he could have had them arrested for trespassing and there was no arrest.

JUDGE BOTTIGLIERI: Your clients are not being charged with trespassing.

MR. HAYES: They even had the right to enter into the building. They had the legal right to be in the building; that's my contention, Your Honor.

JUDGE BOTTIGLIERI: Proceed.

Q At first - - when you first tried to push your way into - -

JUDGE BOTTIGLIERI: No evidence - - -

A I didn't push my way in, I walked.

Q Did you have to force the door open to just get it open to get your arm in?

A No, Sir.

Q It opened easily?

A Opened easily.

Q How far did the door open?

A Just enough that I was walking about half way in until I heard them say, " He's a plumber, don't let him in," and they slammed the door right - - -

Q In other words you walked half way into the door before they said there is a plumber, don't let him in?

A I wouldn't say half way, maybe three quarters. As I recall I opened the door and I started walking in and he's a plumber as - - -

Q How far was the door open, Sir, How far did you get the door open?

A Well, I would say - - I couldn't tell, about that much.

MR. RYAN: Indicating approximately a foot and a half, two foot.

A Maybe a foot and a half, maybe two foot.

Q (Discussion off the record.)

JUDGE BOTTIGLIERI: Counselor, let's stick to the question of the assault.

A Say two and a half feet wide.

Q The door was open two and a half feet and how far did you get past the architrave before - - -

A I would say - - I would say part of my body, maybe as far as my head when I seen these fellows rush for the door; were fighting to close the door. I started to pull back, just as I pulled back, my hand was caught. Fortunately, it could have been my head.

MR. HAYES: I object.

JUDGE BOTTIGLIERI: Overruled.

Q Did you try to pull your arm from the door after the door closed on your arm or did you try to yank your arm out?

A Yes, Sir.

Q And, was your head close to this door when you were yanking it out?

A No, Sir.

Q Did you say anything to them that your arm was in the door?

A I shouted to them. I said, " Open the door, you're breaking my arm," and I shouted it loud enough for them to hear and more then once.

JUDGE BOTTIGLIERI: Counselor, this is a hearing, this is not a trial.

MR. HAYES: I have no further questions.

MR. RYAN: That's the people's case.

JUDGE BOTTIGLIERI: Make your motion.

MR. HAYES: Your Honor, I move to dismiss, at this time,on the ground the people have failed to make out a prima facie case in that the District Attorney indicated this was an unprovoked attack and that from police officers and pickets out there and the newspaper coverage, I think, this plumber readily knew he could not enter into the building even though he had the legal right to enter this building. I say he entered this building to provoke an attack and not only to provoke an attack, but, to break up this sit in and the picketing of the building there.

JUDGE BOTTIGLIERI: Motion is denied; held for trial in Part 2B.

OFFICER MCDEVITT: I come back from vacation the 23rd.

JUDGE BOTTIGLIERI: June 24th, Part 2B.

(This is a true and correct transcript of the minutes taken in this case.)

Harold N. Rusty
Court Reporter

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2A: COUNTY OF NEW YORK

- x

PEOPLE OF THE STATE OF NEW YORK

-against-

HERBERT CALLENDER

Defendant

Docket No.:
C14246

Charge: Dis.
Cond. 1,2,3

- x

100 Centre Street
New York, New York
January 13, 1965

BEFORE:

HON. LOUIS A. CIOFFI

APPEARANCES:

MICHAEL METZGER, ESQ.
Assistant District Attorney
For The People

NATHAN H. MITCHELL, ESQ.
225 Broadway
New York, New York
Attorney for Defendant

GERALD RYAN, ESQ.
Assistant District Attorney
For The People

Thomas Revans
Court Officer

J. A. Yearwood, C.S.R.
Official Court Reporter

COURT OFFICER: 93, Herbert Callender.

MR. MITCHELL: Nathan H. Mitchell.

THE COURT: Is there any legal cause why sentence should not be imposed?

MR. MITCHELL: None, other than we take the position that the conviction is against the weight of the evidence, contrary to law, and of course, Your Honor would not be concerned with that.

THE COURT: That's not a legal cause. Are You? I didn't hear.

MR. MITCHELL: But Your Honor would not be concerned with looking into - in back of another Court's judgment.

THE COURT: I see. Is there any legal cause why sentence should not now be imposed?

MR. MITCHELL: Other than that, no.

THE COURT: You wish to be heard?

MR. MITCHELL: I do. I urge the Court to consider the nature of this particular conviction. It isn't the run of the mill disorderly conduct. It has no basic criminal propensities attached to it, so to speak. The entire matter arose out of certain discriminatory hiring practices in the building trades, in which money from the City of New York as well as

MR. MITCHELL: (cont'g) the State of New York was being poured into it. To indicate there was much merit in these allegations, District Attorney Hogan has seen fit recently to indict a union official, in connection with discriminatory practices in his union.

I would ask the Court, too, to consider the state of world conditions at this particular time. That people all over the world are fighting for freedom; African nations are emerging. There has been some type of unrest here; some type of unrest there. This is not the type of situation that I feel that the Court really should impose a jail sentence on, in connection with this man.

THE COURT: You wish to be heard?

MR. METZGER: Yes, Judge, one or two comments, with regard to the sentence in this case.

As Your Honor knows, the sociology of sentencing turns on the principle of rehabilitation and possible deterencein other cases. I would bring to Your Honor's attentin a couple of facts. That is, on the 13th day of July, last, this defendant was convicted of three misdemeanors: unlawful intrusion upon real property; unlawful assembly; and the inter-

MR. METZGER: (cont'g) fering with the duties of a public officer, and he was sentenced in Part 2B of this Court on the 13th of July. He was given a 30 days suspended sentence, provided that his behavior was lawful thereafter. Two days later, less than 24 hours later, the defendant attempted to arrest the Mayor of this City, which formed the basis of this prosecution and conviction; in that he was disorderly at City Hall, in violationof the law. This was within 48 hours of having been given a suspended sentence. This is a case that could have amounted to three years incarceration on three separate counts. This, I think, Your Honor, shows that this defendant believes that the law does not apply to him; that a conviction with a suspended sentence is merely heads I win, tails you lose. He doesn't care if he gets arrested; wants to get arrested. He went down to City Hall, notified the newspapers, gave out press releases. His purpose is to get arrested. It's a willful, unlawful conduct, and I believe that the defendant stands here today completely unremorseful. I believe that this defendant says, "I am right and the Court may convict me as many times as it wants to. I am going to walk out on the

MR. METZGER: (cont'g) street and I'm right." There is no sense of guilt.

According to the theory of penology, Your Honor, it seems to me that theonly way that we can develop a sense of guilt in this defendant is to show him that willful, crimal misconduct must be paid for.

Now , I would just say, in closing, that Martin Luther King is a peacemaker in this country, and Your Honor well knows his attempts to right certain wrongs through lawful means, and he said in Washington last year, "in ofder to gain our rightful place, we should not commit wrongful deeds."

I believe that this defendant must be instructed, by the sentence of the Court, that he cannot commit wrongful deeds with impunity. I ask that the Court impose a prison sentence of any term that the Court feels proper.

THE COURT: In reply to the defense counsel's statements, I should like to say that no matter how well your purpose a person is pursuing, that purpose or end must be gotten within legal processes. Where the legal process is completely disregarded or ignored anarchy reigns.

The situation in this particular case, the

THE COURT: (cont'g) attempt to serve the Mayor of the City of New York is a deplorable one. Mayor Wagner is not only one of the greatest mayors New York City ever had, but he has stood out very, very prominently in all just causes. He has stood out prominently in the interest of minority groups and all groups who needed assistance. It's a very pathetic thing. I have served with Mayor Wagner, and I know what his mind is, and anybody who would even impugn his integrity or his purposes, even remotely, to me it's deplorable.

However, I note by the record that this case has been pending for an awful long time, and there were a number of warrants have been issued and ordered for this defendant to appear. Defendant has shown an arrogance, a callousness for legal processes which we cannot tolerate. I concur with the remarks of the District Attorney's office, and agree with him wholeheartedly, with Martin Luther King. The way to obtain our objectives is through peaceful, legal processes and not disorderly, illegal processes.

You wish to be heard further, Mr. Mitchell?

MR. MITCHELL: No, Judge, except I would

MR. MITCHELL: (cont'g) like to say this: When we have convictions in our hearts; when we actually believe what we are doing is right - and in this particular case, thisman had consulted a lawyer, not me, but he had consulted a lawyer, who advised him to have summonses issued, summonses had been issued, they were subsequently quashed, he was advised to make an arrest, based on that. He believed that he was right.

THE COURT: But Mr. Mitchell, can you not see that this defendant shows absolutely no remorse. Not only did hisarrogance take him to the office of a great mayor, who is completely in sympathy with the needs of all people, but he has completely - his arrogance compelled him to disregard the legal processes of this Court.

MR. MITCHELL: Well, he has been confused on one or two dates with respect to when he was - -

THE COURT: He was required to appear on a number of occasions and on a number of occasions he failed to come in, until a warrant was ordered for his arrest and he was brought in. I also have been advised, quite by coincidence, that he had another case pending in Part 2B, and the Judge in that Court

THE COURT: (cont'g) advised me that he had to order a warrant for his arrest again, and this is what indicates to the Court that he has no understanding - -

MR. MITCHELL: I attempted to explain before the Court last Friday that those warrants were vacated because the Court recognized that the Criminal Court had no jurisdiction in connection with those two matters. We have only had situation where a warrant was issued here, when the defendant actually should have been here, one particular instance. The case was in the Federal Court at that time. This Court had no jurisdiction.

THE COURT: This was last Friday, when he was brought before me, -

MR. MITCHELL: That's the only instance.

THE COURT: - - on a warrant.

MR. RYAN: May I make a statement? The warrants were issued in a case where the defendant was convicted for a crime at police headquarters; the case I tried. Warrants were issued in that case. Warrants were issued in the case on the assault on a plumber, which is now in Federal Court. Warrants were issued for assault and disorderly conduct cases, MR. RYAN: (cont'g) demonstrations at City Hall.

THE COURT: I am aware of it, and it's this wanton disregard of legal processes that impels me to sentence this defendant to 60 days in the workhouse.

MR. MITCHELL: Very well, Your Honor.

* * *

The above is certified to be
a true and correct transcript
of the testimony.

J. A. Yearwood, C.S.R.
Official Court Reporter

SAME TITLE

ATTORNEY'S CERTIFICATION
(Pursuant to C.P.L.R. 2105)

The undersigned attorney for the defendant-appellant herein, hereby certifies that the foregoing record on appeal contains a copy of the Notice of Appeal, the information with all the endorsements thereon, the minutes of the trial and sentence and judgment roll in the action of the PEOPLE OF THE STATE OF NEW YORK *against* HERBERT CALLENDER, *convicted of a violation of Section 722, 975 Subdivision 1, 2 and 3 of the Penal Law, and said record has been compared by me with the original and it is a true copy of the transcript of the whole of such originals.*

9th

Dated: August 17, 1965.

Walter H. Mitchell

SAME TITLE

ORDER SETTLING CASE

The foregoing case on appeal, containing all the evidence is hereby settled and ordered on file.

Dated: August , 1965.

Judge, Criminal Court

CLERK'S RETURN ON APPEAL

I, the undersigned Clerk of the Criminal Court of the City of New York, respectfully make return to the Appellate Term of the Supreme Court for the First Judicial Department and certify upon the affidavit of the appellant's attorney that there are attached hereto correct copies of the Notice of Appeal and papers required to be returned pursuant to the Code of Criminal Procedure and rules and regulations of the Appellate Term of the Supreme Court for the First Judicial Department.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the above court this day of August, 1965.

CLERK.

SAME TITLE

DEFENDANT'S CRIMINAL RECORD

ADDITIONAL PAPERS ON APPEAL
TO
COURT OF APPEALS

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2B NEW YORK COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-against-

HERBERT CALENDER
WALTER FIESCH
JOEL MEYER

Defendants

Docket #C9833,C9834,C9835

Charge: Assault 3rd

July 23, 1964
100 Centre Street
New York City

BEFORE:

HON. FRANCIS X. O'BRIEN, Presiding
Judge, Criminal Court
City of New York

HON. J. DANIEL FINK
Judge, Criminal Court
City of New York

HON. LOUIS PECK
Judge, Criminal Court
City of New York

APPEARANCES:

Gerald Ryan, Esq.
Assistant District Attorney
For the People

John E. Silverberg, Esq.
15 Park Row
New York, N.Y.
For the Defendants

Herbert Adlerberg, Esq.
Bernard Jackson, Esq.
Associate Counsel for defendants

Patrick McHugh
Court Officer

Peter J. Galati
Official Court Reporter, CSR

COURT OFFICER: Herbert Calender, Walter Fiesch, Joel Meyer, Dockets C9833, C9834, C9835, charged with assault three, represented by private counsel.

MR. ADLERBERG: John E. Silverberg, for defendant Herbert Calender. Mr. Silverberg -- and for defendant Walter Fiesch and Joel Meyer.

VOICE: Bernard Jackson, co-counsel.

MR. ADLERBERG: This is an application to mark the case for two o'clock. Witnesses will be here at one o'clock. Mr. Silverberg will be here at two o'clock.

JUDGE O'BRIEN: Where is Mr. Silverberg?

MR. ADLERBERG: He will be here.

JUDGE O'BRIEN: We are going to mark it for two o'clock, subject to another case which may go on. We will follow up right. Two o'clock.

MR. ADLERBERG: That's agreeable.

MR. RYAN: Satisfactory.

(Case set aside, later recalled)

COURT OFFICER: Docket C9833, C9834, C9835, Herbert Calender, Walter Fiesch, Joel Meyer. Defendants charged with assault third.

VOICE: John E. Silverberg, 15 Park Row, New York.

VOICE: Bernard Jackson, co-counsel.

JUDGE O'BRIEN: Who represents the defendant

Calender.

MR. SILVERBERG: I represent all three.

MR. JACKSON: I am counsel with Silverberg.

JUDGE O'BRIEN: What is your application? Case was marked ready by an associate at half-past eleven this morning.

MR. SILVERBERG: Your Honor, that's incorrect. I don't believe it was marked ready.

JUDGE O'BRIEN: You may not believe it. You weren't here. It was marked ready for two o'clock. Another associate was here.

MR. JACKSON: At the time --

JUDGE O'BRIEN: I am not talking to you. An associate answered ready and you would be here at two o'clock. Associate answered ready.

MR. SILVERBERG: I believe what the associate said --

JUDGE O'BRIEN: Don't tell us what you believe. You were not here. I was here. Get the associate here.

MR. JACKSON: Might I indicate --

JUDGE O'BRIEN: Just a second. I will talk to you later. What did you say?

MR. ADLERBERG: I asked the case be marked ready for two o'clock.

JUDGE O'BRIEN: Marked ready for two o'clock.

MR. ADLERBERG: That's correct, that the witnesses were not here.

JUDGE O'BRIEN: Now, you've got it marked. What do you want to do?

MR. SILVERBERG: Witnesses are here and now. They weren't at the time Mr. Adlerberg made his application. However, we have decided to proceed in a different manner in this case. We have filed with the United States District Court for the Southern District of New York, a petition for removal pursuant to Title 28 of the United States Code, Section 1443. Copies of this petition, notice of filing has been served on the District Attorney's officer.

JUDGE O'BRIEN: When did you decide to do that? When did you decide to make that move? After your colleague answered ready in this case.

MR. SILVERBERG: Yes.

JUDGE O'BRIEN: When did you file the papers?

MR. SILVERBERG: I filed the papers approximately two o'clock this afternoon.

JUDGE O'BRIEN: In Federal Court.

MR. SILVERBERG: Federal Court.

JUDGE O'BRIEN: When did you serve the District Attorney of New York City.

MR. SILVERBERG: I believe the time is stamped on the back here.

JUDGE O'BRIEN: Who dictated the petition?

MR. SILVERBERG: Filing must have been prior to two o'clock your Honor, because the District Attorney has stamped 1:56 P.M.

JUDGE FINK: Who dictated the petition?

MR. SILVERBERG: I did your Honor.

JUDGE FINK: At what time?

MR. SILVERBERG: I don't recall the exact time.

JUDGE FINK: Don't you think it would have been fair to the Court to have your associate advise the Court what you were doing instead of having it marked ready.

MR. SILVERBERG: Well, your Honor ---

JUDGE FINK: You are an officer of the Court. You owe the Court certain duties, you know that.

MR. SILVERBERG: I know that.

JUDGE O'BRIEN: Mr. Ryan?

MR. RYAN: Your Honor, first of all I would like to get the situation straight on the record. This case is on today's calendar Part Two B in the Criminal Court of the City of New York. It was marked ready this morning, by an associate of Mr. Silverberg. As I understand it, Mr. Silverberg was after that, or at that time, Mr. Silverberg was filing in the Southern District Court, a petition pursuant to Title 28, Section 1443. I submit that the People have been ready this morning, they were ready before this petition was filed. Defendant mentioned and was stated on the record that he was ready by his representative, that he should proceed with this case in this Court.

MR. SILVERBERG: Your Honor, Section ---

JUDGE O'BRIEN: What date do you want Mr. Ryan? I don't want to hear any more, counsel.

MR. RYAN: Tomorrow, your Honor.

JUDGE O'BRIEN: Is that sufficient time?

MR. SILVERBERG: Tomorrow for what?

MR. RYAN: Trial.

MR. SILVERBERG: Your Honor, copy of the petition was also served on the Clerk of the Criminal Court. Mr. Morris.

JUDGE O'BRIEN: How much adjournment do you want?

MR. SILVERBERG: Your Honor, our position is that this Court by filing of petition, on service of copy has been deprived of jurisdiction of this case.

JUDGE O'BRIEN: I don't agree with you at all. I am not listening to any cases. I am putting this over to another date. What date?

MR. RYAN: July 30, your Honor.

JUDGE O'BRIEN: July 30.

MR. RYAN: May I ask, Mr. Silverberg, when you filed the petition in the Federal Court.

MR. SILVERBERG: It was filed shortly before 1:56 P.M. I don't know the exact time.

JUDGE O'BRIEN: By whom?

MR. SILVERBERG: By myself, your Honor.

MR. RYAN: That is after this case has been marked ready and sent up here for trial; is that correct?

MR. SILVERBERG: It was marked ready --

JUDGE O'BRIEN: You know it was marked ready. Your associate just came up and said it was marked ready.

MR. SILVERBERG: I wasn't here.

JUDGE O'BRIEN: We will call him up again.

MR. SILVERBERG: I was here when he said it here.

JUDGE FINK: Do you disown what he said?

MR. SILVERBERG: I don't disown what he said.

JUDGE O'BRIEN: July 30.

MR. SILVERBERG: I have a prior engagement.

JUDGE O'BRIEN: July 30th, bail continued.

The above is certified to be a true and correct transcript of the proceedings.

Official Court Reporter, CSR

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : PART 2B

- X

PEOPLE OF THE STATE OF NEW YORK,

-against-

HERBERT CALLENDER, WALTER FLESCH and
JOEL S. MEYERS,

Defendants.

- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOHN E. SILVERBERG, being duly sworn, deposes and says:

That he is one of the attorneys for the defendants herein and is chief counsel and trial counsel for the defendants in the above entitled matter.

That this case is appearing for the first time in Part 2B of this Court.

That your deponent is also chief counsel in more than fifty (50) cases arising out of the demonstrations at or near the World's Fair on April 4 and April 22, 1964 in the County of Queens, City and State of New York.

That as such, your deponent is required to be in Part 1B in the Criminal Court of the City of New York, County of Queens in the cases of JOHN CRONICK, MARJORIE NAPPER and GILBERT BANKS on June 24, 1964 and your deponent is also required to appear on behalf of SHARON EOLIS in Part 3 of said Criminal Court, Queens County also on June 24, 1964.

That your deponent has made several attempts to contact attorney CHARLES T. Mc KINNEY, but has been unable to speak to him concerning the trial of the above entitled matter.

That your deponent has been informed by attorney **BERNARD JACKSON** that he is in Washington, D.C. at the present time attending the National Convention of the N.A.A.C.P.

That your deponent has not as yet obtained a transcript of the minutes of the hearing which was held in the above entitled matter on June 3, 1964.

WHEREFORE, deponent respectfully requests that the above entitled matter be adjourned to July 23, 1964.

Sworn to before me this

23 day of June, 1964.

JOHN E. SILVERBERG

FRED L. SOBEL
NOTARY PUBLIC, State of New York
No. 24-37[illegible]
Qualified in Kings County
Commission Expires March 30, 196[illegible]

CRIMINAL COURT OF THE CITY OF NEW YORK
PART 2D: COUNTY OF NEW YORK
---------------------------------------X

THE PEOPLE OF THE STATE OF NEW YORK :

-against-

HERBERT CALLENDER,

Defendant.

---------------------------------------X

ChargeSec. 722
Subdivision 1,
2 & 3 of the
Penal Law
Docket #014246

TRIAL

Before: JUDGE MITCHELL J. SHERWIN

APPEARANCES:

MICHAEL METZGER
Assistant District Attorney
60 Centre Street
New York, New York
For the People

NATHAN H. MITCHELL
225 Broadway
New York, New York
For the Defendant.

COURT OFFICER: CAlendar #014246, HERBERT CALLINDER, Charge: Disorderly Conduct.

THE COURT: Counsellor, before we start, I would appreciate it if all the people in this case, outside of public officials, not have any decoration on.

DISTRICT ATTORNEY: I would like to make a motion at this time, that the affidavit in this case charges a violation of 722 Subdivision 1, 2, and 3. Now, as I understand the law of this State Your Honor if the People proof any subdivision it makes no difference what subdivision is charged. If your Honor is not in agreement, then I would ask that another subdivision be added to cover it.

NATHAN H. MITCHELL, ESQ.: It is my understanding that when I read it and as I interpreted it. When a person is charged with blanked disorderly conduct. If any subdivision has been made out and we are found guilty, but when we have been charged specifically with certain subdivisions----

THE COURT: Let's cut this portion short. If the People wish to proceed the way it is now, they can proceed.

NATHAN H. MITCHELL, ESQ.: Well I am opposed to amending it.

THE COURT: All right, lets proceed.

DISTRICT ATTORNEY: The people are ready.

THE COURT: If I agree with you before trial---------

DISTRICT ATTORNEY: That is quite all right.

THE COURT: Now, the defendant pleaded not guilty.

NATHAN H. MITCHELL, ESQ.: Not guilty and ready for trial.

THE COURT: Call your first witness.

SGT: BURKE, called as a witness for the People, being first duly sworn, testified as follows:

NATHAN MITCHELL, ESQ.: At this time I move that all witnesses be excused.

THE COURT: All witnesses excused until they are called to testify.

THE COURT: Now, we will proceed with the testimony of Sgt. Burke.

THE COURT: State your name and identification.

A Sgt. Dennis Burke. Shield Number 865. Detective, Borough of Manhattan South.

EXAMINATION BY DISTRICT ATTORNEY: MIKE METZGER.

Q Now, Sgt. Burke on July 15, of this year, you were on duty, were you not?

A I was.

Q You were in plain clothes ?

A I was .

Q You were assigned to the so called City Hall detail?

A That's correct.

Q Will you tell us what occurred on July 15th, in City Hall with respect to the defendant Herbert Callinder?

A At about 10:50 a.m. on July 15th, 1964, the defendant Herbert Callinder appeared at the Police Gate leading to the Mayor's office at City Hall.

Q Before you continue, will you describe to the Court just where this gate is located and the general physical surroundings?

A If you were to enter City Hall, you would climb about 15 or 20 steps , walk across a park about thirty feet into the center of the building, that would be the midway between east and west of the building. If you proceed about twenty feet west you would enter a corridor.

THE COURT: You turn left or right when you say west?

SGT. BURKE: Left sir. You would enter a corridor approximately eight feet wide by about twelve feet long; that is up to the police gate, the corridor continues on inside.

Q Is there a reception desk?

A There is a police desk on the inside of the gate.

Q When people want to go through that gate what do they do?

NATHAN MITCHELL, ESQ.: Objection as to the form of the question.

THE COURT: Well, no I will sustain the objection.

THE COURT: Is there somebody at the gate officer?

A There are persons at the gate.

THE COURT: I mean an official?

A A Police officer.

THE COURT: That is what I meant. In order to gain entrance through that gate, do you have to havesome identification or personal business to go through the gate?

A You state your reason and who you want to see, to the police officer on duty at the gate.

Q On the other side of the gate what does one find?

A As you proceed through the gate you enter the confines of the corridor immediately to the left the Office of the Executive Secretary to the Mayor, another room is where the Clerical help maintains offices and the room used by the Legal Assistant to the Mayor. As you proceed straight ahead you would enter the room occupied by the Secretary of the Deputy Mayor, to the left of that a reception room going back to the room occupied by the Secretary of the Deputy Mayor. If you turn right you would enter the Mayor's waiting room, off that is the Deputy Mayors office. The office of the Secretary of the Mayor and several other assistants.

Q These are then the Executive Chambers beyond the gate and all the intended offices, is that right?

A Yes.

Q On July 15, tell us exactly what happened.

A Mr. Callinder presented himself at the gate at 10:50 a.m.

Q Was he alone?

A There were several people with Mr. Callinder at the time I observed him.

Q What happened when he came to the gate?

A I inquired as to what Mr. Callinder's business might be.

THE COURT: You were the officer at the gate?

A I was one of the officers. Mr. Callinder stated that he was there to effect the civilian arrest of the Mayor charges 1838 and 1865 of the Penal Law. He asked my assistance in making the arrest. I informed him that we have been advised by the Corporation Counsel and by the Legal Bureau of the Police Department and others that such arrest would be illegal and that I would refuse to assist him in making such an arrest.

Q You were saying that you have informed Mr. Callinder of the Corporation Counsel and the Legal Bureau of the Police Department advice?

A Yes. Then he said that I was really obliged to and if I refused to do so he wanted my name and badge and full identification.

Q You told him your identification?

A Yes.

Q Then what happened?

A Mr. Callinder then spoke into some tape recorders.

There were many cameramen, reporters and men with tape recorders there. Mr. Callinder spoke for their benefit or at least into the machine. I then told him that he was causing a crowd to collect and interferring with the normal business of City Hall, by preventing normal exits through the gate and I asked him to leave.

Q Now, did you know of your own knowledge what the schedule was with respect to the Executive Chambers?

A The Mayor was scheduled to sign some local legislation and also some announcement concerning a gift to Mt. Morris Park.

Q Would you describe Sgt. Burke for the Court the conditions with respect to people at that time that you told Mr. Callinder the first time that he was causing a crowd to collect?

NATHAN H. MITCHELL, ESQ: Objection

THE COURT: Overruled.

Q At the time you told Mr. Callinder that he was causing a crowd to collect--------

NATHAN H. MITCHELL, ESQ: He told him that there was causing a crowd to collect.

THE COURT: Well, what did you say Mr. Callinder?

HERBERT CALLINDER: After I informed him of what I wanted and he would not assist in the arrest. I told him by his actions he was causing a crowd to collect. He was preventing the normal entrance and exit through that gate and that was about it. I asked him to leave.

Q At the time that you made this statement to Mr. Callinder with regard to his actions causing a crowd to collect and asked him to leave. Would you describe to the Court just what the condition was.

A In the corridor approximately eight by twelve feet, there were I would say thirty persons scattered in that area.

Q Did you see any of the people that were scheduled to have appointments in the Executive Office?

A I did not look to identify those that were there. I was busy with Mr. Callinder.

Q Was there any access to the gate from the outside at that time?

A No normal or easy access.

NATHAN H. MITCHELL, ESQ: Objection.

THE COURT: Sustained.

A Through the congregation of persons it is possible that you could fit.

NATHAN H. MITCHELL, ESQ.: Objection

I move that that be stricken.

THE COURT: Was there room for people

who had official business to come in through that entrance gate at the time of this incident when you told Mr. Callinder to leave?

A Not with pushing people aside.

NATHAN H. MITCHELL, ESQ: Objection. Move that that be stricken.

THE COURT: I will allow it.

Q Did you know of your own knowledge where the scheduled appointments were held that morning?

A I do not.

Q Was Lt. Delehanty with you?

A Lt. Delehanty was in the vicinity.

Q Now getting back to the event of the day, you told Mr. Callinder to leave, at that time, what if anything did he say to you?

A He ignored my request at that time. He spoke to reporters and spoke to other persons of that kind, and asked Lt. Delehanty to assist him in making the arrest of the mayor.

Q Will you describe the part that you heard.

A Mr. Callinder approached Lt. Delehanty, asked who he was. He told him his purpose and asked his assistance in making the arrest of the mayor.

Q Then what happened?

A I was otherwise occupied. I don't know what

Lt. Delehanty's response was to him, by that time the crowd had grown some what larger. I then approached him and told him he was definitely.....because of the crowd that collected. He obstructed the entrance to the hall and interfered with the Mayor's business and asked that he leave.

Q What reply did he make if any?

A He stated that he would remain there until he would make the arrest of the Mayor, for the purpose he had stated earlier.

Q Then what happened?

A I informed Mr. Callinder that if he refused to move on, he then refused. I told him he was under arrest. I asked him to accompany me to the station house, which he did.

Q Would you estimate or tell the Court Sgt. Burke what your estimate is of the people that had collected by this eight by twelve area during these proceedings?

A Thirty.

DISTRICT ATTORNEY: YOUR WITNESS.

NATHAN MITCHELL, ESQ. TO SGT. BURKE:

Q Now, Sgt. Burke, did you ever, at any time hear the Mayor of New York say that he had waited for Mr. Callinder, but Mr. Callinder was busy talking to reporters, and evidently did not see him.

Did you ever hear that----------------------------

Statement?

A No.

Q You are certain about that?

A No.

Q Now, you say you first saw Mr. Callinder at approximately 10:50 a.m.?

A Yes.

Q At that particular time you say he had come into the open' area way?

A I had seen Mr. Callinder previous to that, I saw him on the sidewalk as I arrived with the Mayor.

Q Then there came a time that you saw him inside of the building?

A Yes.

Q And this particular area way immediatkly inside the door is approximately 30 feet by 40 feet?

A Yes. By 30 or by 50, I would say.

Q Now, leading to the Executive Office there is a smaller corridor, is that correct?

A Yes.

Q Is it a fair statement to say that this corridor is interrupted or cut off by the gate, then by a desk occupied by a member of the Police Department?

A It is .

Q Beyond that the various officers, is that correct?

A Yes.

Q When you first had the conversation with Mr. Callinder where was he standing?

A On the outside of the gate.

Q How wide did you say this gate is?

A The gate is approximately three feet/. However, there is a railing about two feet.

Q Is it roughly eight feet.

A Yes.

Q Now, at the time you had the first conversation with Mr. Callinder, is it your testimony that there were other people there in connection with this gift to Mt. Morris Park?

A It is my recollection.

Q Were there other people there in connection with official business with the Mayor of the City of New York, in connection with Mt. Morris Park?

THE COURT: If you know.

A I don't know.

Q Did you ever hear that there were other people in connection with the gift to Mt. Morris Park?

A I did.

Q Are you normally on duty there?

A Yes.

Q Is it a fair statement that there were more people because of the signing of this legislation and in connection with this particular gift than there is normally when there are no official duties by the Mayor?

MIKE METZGER: I am going to have to object to that "are there more people there than usual"

THE COURT: Were there more people there than usual?

A In that corridor, yes.

Q Now, you said there came a time that you had this conversation with Mr. Callinder and he asked you to enable him to effect civil arrest, citizens arrest on the Mayor?

A He asked me to assist him.

Q You told him that you had an opinion by the Corporation Counsel that such an arrest was not legal?

A That's right.

Q Now, during this particular time where were these people who you say were in the corridor; where were they?

A Immediately in back of Mr. Callinder to his side.

Q Now, at that particular time, were there any of these people who made statements to you with respect -----------------

to being unable to get inside of the gate?

A No.

Q Do you have any person heretoday who will come forward and testify (withdrawn)

Do you have any person here who was annoyed or obstructed or disturbed by this defendant?

DISTRICT ATTORNEY: Objection: that is not any sort of a question.

THE COURT: I will sustain the form of the question. Did anyone make any complaint to you officer, that they couldn't get in?

A No, sir.

Q Did you at any time see any one attempt to get in?

A I would be unable to interpret the persons actions as to whether they would be able to get in or not.

THE COURT: How wide was the area that leads directly into the corridor through the gate?

A The corridor I speak of is approximately eight feet wide by about 12 feet in length. I believe the District Attorney asked you what would be the maximum people you would estimate to be there, I believe you said thirty?

A About thirty.

THE COURT: Could you tell, or do you remember whether or noth they were spread across the entire width?

A They werefour or five people across and about six deep.

THE COURT: How many would normally be able to walk through there without having to jostle. I mean push people aside. Would four people be able to walk down that area?

A We don't usually have any congestion. The person that approaches the gate...........

THE COURT: They identify themselves?

A Yes. If their purpose is legitimate they are permitted through.

THE COURT: That is the standard operating procedure?

A That's right.

THE COURT: That is, they identify themselves, you either call in to find out whether they are the person that had the appointment and then if they are you admit them?

A Yes, if they are messengers, clerical help or officials they come right through.

Q Did anyone person approach the gate and say that they had an appointment to get in.

DISTRICT ATTORNEY: I have to object to this.

THE COURT: He has already answered the question.

Q I will ask you this, is it your testimony that Mr. Callinder's presence there obstructed people from going into the gate?

A Yes.

Q But nevertheless is it a fair statement to say that no one approached the gate and asked to get in?

A They didnt ask me.

Q Did you have any knowledge whether they asked anybody else?

A I don't have that knowledge.

Q Did you hear anyone say I am trying to get in but I can't get through the crowd?

A No.

Q There was a certain ceremony with respect to this gift to Mt. Morris Park?

A That's right.

Q Do you know whether at that time that you were consulting with Mr. Callinder that this Mayor was ready to receive those people?

A No.

Q So you don't know whether those people were -------

able to enter or not?

A We wouldn't interfere in that. The Mayor gets in as early as convenient. They might go in a half hour or so ahead of time.

NATHAN H. MITCHELL, ESQ: I have no further questions.

DISTRICT ATTORNEY: I call Lt. Delehanty of the New York City Police.

Lt. Delehanty, called as a witness, being first duly sworn, testified as follows:

Q What is your name?

A Lt. John W. Delehanty.

Q Your assignment?

A Second Division. Temporarily assigned to patrol Borough Manhattan South.

Q Lt. Delehanty on the fifth day of July last, you were assigned to City Hall Detail in Manhattan?

A Yes.

Q Would you describe what you observed from approximately 10:50 in the morning thereafter?

A Mr. Callinder arrived at City Hall, with two other people and he wanted to make a Citizens Arrest.

NATHAN MITCHELL, ESQ: Objection as to what he wanted.

THE COURT: What did you see, Officer?

A Mr. Callinder arrived at the gate leading to the Mayor's office. He was asked by Sgt. Burke what is the nature of ycur business. He asked Sgt. Burke to assist him to make a citizens arrest upon the Mayor for violation of 1838 and 1865 of the Penal Law. Sgt. Burke advised him that he had received an opinion from the Corporation Counsel that such an arrest was illegal, no violation of the law existed. He asked Sgt. Burke again, will he assist him in making a citizens arrest. Sgt Burke refused and told him that the opinion of the Corporation Counsel was that no violation of the law existed. Therefore we do not assist in making an arrest. Mr. Callinder turned to me and asked me, if I was a police officer. I told him I was. He asked me my name, I told him I was Lt. John W. Delehanty. He asked me, if I would assist him to make an arrest upon the Mayor, a citizens arrest. I informed Mr. Callinder of an opinion received from the Corporation Counsel's office that the arrest would be illegal and that no violation of the law existed. He asked me the second time to assist him. I refused, at this time Sgt. Burke asked Mr. Callinder to leave the area leading to the Mayor's Office because he was causing a crowd to collect and interfering with the normal business of City Hall. He refused. I asked him to leave the corridor because he was interferring with the normal business. He still refused, and then Sgt.

Burke placed him under arrest. We escorted Mr. Callinder through the crowd and out of the rear entrance of City Hall and placed him into the patrol wagon.

Q Now, Lt. Delehanty would you describe (withdrawn) Will you tell the Court please, what the condition of the corridor of this area on the outside of the gate waslike prior to the time that Mr. Callinder arrived prior to this point with respect to people?

A People were arriving at City Hall that morning for the Mayor's scheduled calendar of a gift for Mr. Rogers from Mt. Morris Park and also local laws were to be signed, and a minimun wage law was to be signed.

Q Was the area way which has been described as being eight by twelve the area way leading up to the gate, what condition was that ior to the time that Mr. Callinder came, was it crowded or not crowded?

A It was not crowded.

Q After Mr. Callinder came, what happened?

A The crowd startedto collect when Mr. Callinder was requestingour assistance . A group of people that were there for the signing of the minimum wage law were being escorted upstairs to await the opening of the reception room where the Mayor was going to sign the local laws and minimum wage law.

Q In other words, they were supposed to go through the gate?

NATHAN H. MITCHELL, ESQ: Objection.

THE COURT: Sustained.

Q Where were they supposed to go?

A They were going to go through the gate when they finished with the acceptance of the gift for Mr. Rogers.

Q Did you see any one else that had appointments in the executive chambers at that time?

A I did notice the people coming from the opposite side the people who had normal business who had business in Mr. Screvane's office. The normal clerks and other people.

Q Were there any access from the gate to the outside hallways through these poeple?

A It was impossible to get through the crowd that was gathered around.

DISTRICT ATTORNEY: Your witness.

CROSS EXAMINATION BY NATHAN MITCHELL:

Q Is it your testimony that Mr. Callinder's presence at this particular time, interferred with orderly business of City Hall?

A Yes.

Q Will you describe in what manner you say his presence interferred with the orderly business of City Hall?

A By his refusal to leave the area in front of the gate to allow the people that wanted to attend the Mayors Reception Room for the Reception.

Q Did anyone complain that I am trying to get through to the Mayors Reception, or trying to get through to the Mayors Office to you?

A No, they did not.

Q Do you have any one here who was annoyed, disturbed or obstructed by Mr. Callinder's presence?

DISTRICT ATTORNEY: Objection.

THE COURT: Sustained.

Q Do you have any other witness to this incident, other than yourself and Sgt. Burke?

DISTRICT ATTORNEY: Objection.

THE COURT: Sustained.

Q Did you at any time hear anything from the office on the inside of the desk, say, there are people who are trying to get in but they can't?

A Not to my knowledge.

Q Now, you say there came a time when certain people who were interested in the ceremony with respect to the gift of Mt. Morris Park.........

A No sir.

Q What is your testimony, to who had gone upstairs?

A Most of the people in connection with the minimum wage law and the street changes.

Q It was their duty to go upstairs prior to going through the gate?

DISTRICT ATTORNEY: Objection.

THE COURT: Was it their duty?

A They were requesting to go up.

THE COURT: By who?

A By the patrolman at City Hall.

THE COURT: Would that be the normal procedure to tell them to wait up in that room?

A That would be, because there was something else going on in the Mayors Reception Room.

THE COURT: The Mayor was already being engaged in a transaction of official business at the time?

A To the best of my knowledge, so that nobody else could go in and the people who had to wait for him, went up to counsel chambers. He had waited to come down into the Reception room.

Q Did you at any time hear Mr. Callinder say anything to the waiting people that was abusive or offensive to them?

A No, I did not.

NATHAN MITCHELL, ESQ. I have no further questions.

DISTRICT ATTORNEY TO LT. DELEHANTY:

Q Now, these other offices, besides those of the Mayor himself on the other side of the gate?

A Yes.

Q There are other various administrative assistants, is that right?

A Yes.

Q The People, specifically referring to the group that was interested in something to do with Mt. Morris Park, those people were to be brought through the gate when the Mayor himself was ready to see them, is that right?

A To the best of my knowledge, yes.

Q Would you estimate for the Court the maximum number of people in your estimation that gathered in this eight by twelve area during the time that Mr. Callinder was there?

A Approximately forty or fifty people.

Q Now, you say there was no access to the gate?

A No, there was none.

DISTRICT ATTORNEY: You may step down.

NATHAN MITCHELL, ESQ: Just one further question.

Q Lt. Delehanty, if Sgt. Burke testified that in his opinion there were approximately thirty people, would you say he was in error?

A Sgt. Burke was giving his opinion, I was asked to give my opinion.

THE COURT: IN your opinion, it was between forty and fifty?

A Yes.

THE COURT: Thank you.

NATHAN MITCHELL, ESQ: If the Court Pleases, the defendant respectfully moves for a dismissal of the Complaint with respect to each subdivision, one, two and three of Sec. 722 of the Penal Law, on the grounds that the People have failed to establish a primie facie case.

THE COURT: Motion denied.

NATHAN MITHCELL, ESQ:: The defendant will take the stand.

HERBERT CALLINDER, called as a witness, first being duly sworn testified as follows:

Q What is your name?

A Herbert Callinder.

Q Where do you live?

A 755 East 168th Street, Bronx

Q What is your business or occupation?

A I am a field Secretary for CORE.

Q Are you married?

A Yes.

Q Do you have children?

A Yes, I have a son.

Q Do you remember your arrest on July 15th, 1964?

A Yes, I do.

Q Tell the Court what transpired from the time that you went to City Hall until such time as you were placed under arrest.

A It was approximately ten o'clock, when I approached City Hall, and as I was walking up the steps there was a group of reporters outside who stopped me. They wanted to ask a number of questions, prior to my going inside, and I answered as many as I could. Then I said, well, I had business on the inside. I attempted to go inside. I was stopped at the time by Inspector "JACK" who identified himself to me and he stated to me I couldn't go inside of City Hall and then I began to explain to them that I had business there. He said, well as far as I know you don't have any business here and you are not supposed to go in. But then he relented, somehow and I went and I approached the gate. The gate that I believe leads to the Mayor's office. I saw Sgt. Burke there. I walked up to him, I think I said, hello Sgt. Burke, I began to explain my business. I explained to him that I was there to effect a citizens arrest of Mayor Wagner, *charging him with misappropriation of public funds, that the funds were being used for public projection supplying contractors and discriminated against Negroes and Puerto Ricans, that to focus this law, this is one of the means that we wanted to bring before the court--Mayor Wagner before the Court and let the issue be decided. He said that he could not--as far as he knows, I couldnt do that. I explained that I am asking his assistance as a police officer and he said, that he couldn't give me any assistance, that he had been informed by his Corporation Counsel that this was illegal, that I was attempting to involve myself and him, and that he couldn't assist in any way. I was standing directly in front of the gate that swings back and forth. I moved to the side, at this time, Sgt. Burke came out from behind the gate. I asked him----there "were or not" (shorthand notes)---by this time several reporters had come in and they hadput microphones in between our conversation. There was a radio microphone and also some television cameras, but we still talked and I asked him whether or not he was acquainted with the law in regards to a police officers duty to assist a citizen in a citizens arrest arrest. I asked him whether he was deciding or whether the Corporation Counsel was deciding the guilt of my charge. He said no. All I know is that the Corporation Counsel tells me that this is illegal and I can't go through with--------*

it. A few minutes later, Lt. Delehanty, well, I know he was standing to my right near the gate and just out side. I walked over to him and I asked him for his assistance, also explaining my purpose there, explaining my purpose there, explaining who I was, asking whether or not he would assist me in a citizens arrest. He stated that he couldn't do it, also stating that the Corporation Counsel advised him that this was illegal, that he could not participate. A few minutes later we were up against the wall, as a matter of fact of the corridor and we spoke there just those minutes. Sgt. Burke came out and walked up to me and asked me whether or not I was going to leave, and I said, well, first let me explain. I am not here to engage myself in any civil disobedience and I am not here to disrupt anything, but I am here to make a citizens arrest and I believe that is my right, and that I was willing to wait until that arrest could be effected when some police officer could assist me with it. I was willing to try to find at least one. He said well, if you don't leave I am going to put you under arrest. I asked him again, at this time whether or not he would assist me, and he said, all right you are under arrest.

THE COURT: What did you say to the officer when he said to you, if you don't leave I am going to place you under arrest?

A All I did, was again to ask him for his assistance in a citizens arrest.

NATHAN MITCHELL, ESQ: Is it a fair statement Mr. Callinder to say that your purpose there was a form of protest because of what you believed to be discrimination on a racial ground in the building and trade unions and public construction?

THE COURT: He has already testified that, that was his purpose.

DISTRICT ATTORNEY: May I inquire.

Q Mr. Callinder do you remember Sgt. Burke telling you that you were causing a crowd to collect and if you did not leave, you would be placed under arrest?

A No.

THE COURT: Would you say that he didn't say that?

A I would say that I don't recall him saying anything about a crowd because there was not that much of a crowd.

THE COURT: Do you remember him saying that, if you don't leave I will place you under arrest?

A Yes, he did say that.

Q Do you remember saying that you would not leave until you effected the arrest.?

A What I did was just ask him again for his assistance.

Q How many people gathered around you in front of the gage at this time?

A Honestly I have no idea how many people gathered around me. There were two people that came down from Bronx Core, that is Mr. Waltell and Mr. Valentine.

THE COURT: You did see a number of people collect?

A Well, as I recall, there were a number of people in the corridor when you first walked in straight ahead. There were a number of pressmen there.

DISTRICT ATTORNEY: You had given out advanced information to newspapers?

A I believe a press releasewas issued, yes.

Q Mr. Callinder did you have any real belief that you were going to effectuate the arrest of Mayor Wagner when you went down to City Hall on the 15th of July?

NATHAN MITCHELL: Objection.

THE COURT: I will allow it.

Q Did you really think you would be able to arrest him?

A Yes, I did.

Q Is it a fair statement that you went down there to gain publicity and also to become a champion?

NATHAN MITCHELL, ESQ.: Objection. I am talking about the champion part.

Q Is that your cause you went down there to get as much publicity as possible for this cause that you were engaged in at the time?

A No, sir. I went down there to effect a citizens arrest, what we had hoped for was that the matter would be brought before the Court and that a decision could be rendered.

Q Had you made a prior attempt that was not successful?

A At some point earlier we had taken out a summons.

Q That summons was squashed was it not?

A When it was found out that the the judge had put......

NATHAN MITCHELL, ESQ: There is no such allegation anywhere.

THE COURT: If you know.

A Well, I don't know about the clerk, I know it was squashed in Court.

Q You knew that, at the time you went down to City Hall, on July 15th that you had been unsuccessful in the Court in obtaining this particular goal, that is the -------

the arrest of Mayor Wagner?

NATHAN MITCHELL, ESQ: I am going to object. It has nothing to do with whether or not he was disorderly on thisparticular case.

THE COURT: OVERRULED.

NATHAN MITCHELL, ESQ: Exception.

THE COURT: Did you seek any advice from any legal source before you went down to effect what you termed a citizens arrest?

A Yes. I was advised by attorneys that the matter of the citizens arrest was all right. It was something that we could engage in and we also made our position pretty clear that we were not engaged in civil disobedience of the law.

Q After you were told by Sgt. Burke and then by Lt. Delehanty that you would not be assisted in making this arrest did you intend to stay in front of the gate until such time as you could get assistance in making the arrest?

A No, I had intended to get another police officer or rather ask him if he would assist in the arrest. I was operating under the assumption that there must have been somebody who would try to see the law carried out.

Q You gave interviews while in the hallway to a news media both television and radio?

A No, it was not exactly an interview. I didn't even know who it was.

Q You spoke into microphones, is that right?

A I think that the microphones were there in front of us as I was asking questons to Sgt. Burke.

Q You had hoped that there would be a good deal of newspapers.

NATHAN MITCHELL, ESQ: Objection.

THE COURT: Sustained.

NATHAN MITCHELL, ESQ: It calls for an operation of the defendant's mind.

DISTRICT ATTORNEY: The operation of his mind is what is in ussue today.

THE COURT: I will make that determination based on the facts.

DISTRICT ATTORNEY: Well, I thought I could ask him what the operation of his mind was and get right to it.

Q You did give out press releases with regard to events that would take place on July 15th?

A Right.

Q Did you feel that this would some way effect the arrest of him?

A We explained what our procedure was.

DISTRICT ATTORNEY: Just answer the

question.

Q Did you think this would help you in giving out press releases?

A I don't think it was taken into consideration as to the citizens arrest.

Q Have you ever been convicted of a crime?

A Yes. I was convicted of sit-ins in the Police Department.

Q Do you remember the specific crime?

A Disorderly conduct.

THE COURT: That is no crime, that is an offense.

Q Any crime other than that?

A Unlawful assembly during the freedom rides in 1961.

THE COURT: What about here in Manhattan?

A No crimes that I know of, sir, outside of what I stated here.

Q Were you not convicted two days prior to the incident in this caseon July 13th of unlawful intrusion?

A Whatever the charges were connected with the sit-ins at Police Headquarters.

Q Now, after you were placed under arrestand taken to the patrol wagon your two associates................

NATHAN MITCHELL, ESQ:, Objection. His associates have nothing to do withthis trial.

DISTRICT ATTORNEY: Well, it is highly prejudicial.

THE COURT: You have no jury here.

Q After you were arrested did you tell any one else to continue on in the effort to arrest Mayor Wagner?

NATHAN MITCHELL, ESQ.: Objection.

THE COURT: I will allow it.

NATHAN MITCHELL, ESQ: It has nothing to do with whether or not he was disorderly.

THE COURT: I think it can show the state of mind the defendant had all the time.

Q Did you tell any one else to continue on?

A I don't recall.

DISTRICT ATTORNEY: I have no further questions.

NATHAN MITCHELL TO HERBERT CALLINDER:

Q At any time did you speak in a loud abusive language to any one in the area?

A No, I did not

Q At the time that you spoke to two people to go back to city Hall, did you tell them to act in a disorderly manner?

A I don't recall saying anything to them.

Q Did you at any time act in a disorderly manner yourself?

A No.

Q Did you see any one attempt to get through the gate when you were speaking to the police officers?

A No.

Q Did you hear any one say I would like to get through?

A No.

THE COURT: This is supposed to be re-direct. This has not been brought out on cross-examination.

NATHAN MITCHELL, ESQ: Very well, Your Honor I withdraw the objection. Just one further question. Mr. Metzger alluded to certain convictions-- well, if it is two convictions they arrived out of a single transaction at City Hall, isthat correct?

A That's correct.

THE COURT: Step down.

DISTRICT ATTORNEY: I have nothing further.

NATHAN MITCHELL, ESQ: Defendants case.

THE COURT: People rest?

DISTRICT ATTORNEY:: People rest.

NATHAN MITCHELL, ESQ: If Your Honor please, I respectfully submit that the People have failed, and failed miserably to prove defendant's guilt beyond a reasonable doubt, with respect to all three subdivisions, one two and three of Sec. 722 of the Penal Law, Disorderly Conduct.

There has been nothing by the officers testimony or any other evidence that the defendant used any offensive or abusive language or behaved in any manner toward any person as to bring him within the purview of subdivision one.

The testimony has failed to establish that his actions talking with the police officers indicated the desire to effect civil arrest or what have you. He didn't annoy any one, obstruct any one from going about orderly business that they had in City Hall.

Number three, with respect to being requested to move on it is clearly established that that section only applies when on a public street. We certainly can not construe the corridor of City Hall as being a public street within the purview of this particular subdivision.

There has been much talk about causing a crowd to collect around. Now that deals with subdivision four of 722 which he is not charged with subdivision four.

I would say again that as far as the New York State Statute, it requires the evidence of that strada of evidence that is required to convict under these three subdivisions and they have not been established. Assuming that any one of them had been established, the defendant has testified that this was a matter of protest which clearly falls within the purview of the First Amendment to the United States Constitution. It should not, even if it ran counter to our New York Statute in the absence of showing a clear and present danger to others. His activities should not be curtailed, because it was only a furtherance for him to protest that right granted to him by the First Amendment of the United States Constitution.

THE COURT: Motiondenied.

I find the defendant guilty. Guilty with respect to all three counts. I am finding the defendant guilty of disorderly conduct within the meaning of 722.

What date for sentencing?

NATHAN MITCHELL, ESQ: Jaunary 4th.

THE COURT: Have you ever been convicted of any crimes other than what you testified-----

to that you recall?

HERBERT CALLINDER: No sir.

THE COURT: How long have you lived in New York?

HERBERT CALLINDER: All my life just about.

THE COURT: THE DEfendant is on bail?

NATHAN MITCHELL, ESQ: He was paroled. Why is there any reason whatever that bail should not be continued or parole should not be continued?

DISTRICT ATTORNEY: I want to be very clear. The defendant was on bail he was not here on the 23rd , Monday.

NATHAN MITCHELL, ESQ. He appeared on the 24th voluntarily. I dont want you to get ficious.

THE COURT: There is nothing he can say that can be imputed to be ficious. I think that he has been very patient.

DISTRICT ATTORNEY: When Mr. Callinder voluntarily presented himself here on the 24th which was yesterday, his bail had been forfeited. While Mr. Mitchell anticipated a great fight, I made no objection to the defendant being paroled because I was sure that he was able to be here this morning.

THE COURT: I am going to parole the defendant. January 4th for sentencing. Officer and record.

****

I, FLORENCE CLARK certify that the within is a true and accurate copy of my stenographic notes.

FLORENCE CLARK, REPORTER

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-------------------- x

PEOPLE OF THE STATE OF NEW YORK,

-against-

HERBERT CALLENDER, WALTER FLESCH and
JOEL MEYER,

Defendants.

-------------------- x

64 Civ 2293
U.S. District Court
Filed
July 23, 1964
S. D. of N.Y

TO: CLERK OF THE CRIMINAL COURT
OF THE CITY OF NEW YORK
COUNTY OF NEW YORK
100 Centre Street
New York, New York

SIRS:

PLEASE TAKE NOTICE, that a verified petition for removal of the above entitled action from the Criminal Court of the City of New York, County of New York, to the United States District Court for the Southern District of New York, a copy of which is annexed hereto, was duly filed this day in the said United States District Court for the Southern District of New York at the United States Courthouse at Foley Square, New York, New York.

Dated: July 23, 1964.

YOURS, etc.,

JOHN E. SILVERBERG, ESQ.
15 Park Row
New York 38, New York

BERNARD JACKSON, ESQ.
401 Broadway
New York, New York

CHARLES T. Mc KINNEY, ESQ.
165 Broadway
New York, New York

Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - X

HERBERT CALLENDER, WALTER FLESCH,
and JOEL MEYER,

Petitioners,

-against-

PETITION FOR REMOVAL

THE CITY OF NEW YORK,

Respondent.
- - - - - - - - - - - - - - - - - - X

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

The petition of the above named petitioners by JOHN E. SILVERBERG, one of their attorneys, respectfully shows:

1. On May 14, 1964, your petitioners were arrested by the Police of the City of New York on the complaint of JOHN BASILICO and charged with violating Section 244 of the New York State Penal Law. Upon information and belief, petitioners have been released on parole. All petitioners are awaiting trial in Part 2B of the Criminal Court of the City of New York, County of New York, under Docket Nos. C-9833, 9834, and 9835. Said trial is scheduled for July 23, 1964.

2. The aforementioned actions taken by the City Police and Criminal Court are all in violation of the Civil Rights of the petitioners herein and said proceedings are therefore subject to removal to this Court pursuant to the provisions of Subdivisions 1 and 2 of Title 28 U.S.C. Section 1443.

3. That the arrest and prosecution of petitioners violates the Constitution of the United States and the Amendments thereto and the laws of the United States, by

making criminal, conduct which is protected by the First and Fourteenth Amendments to the Constitution of the United States.

4. That petitioners are denied, and/or cannot enforce in the Courts of the State of New York, rights under the Constitution and laws of the United States providing for the equal rights of citizens of the United States and all persons within the jurisdiction thereof, and/or are being prosecuted for acts under color of authority derived from the Constitution and laws of the United States.

5. That petitioners are denied all rights and cannot secure a fair trial and have no rights under the Constitution of the United States in the local courts as illustrated by the following:

(a) Petitioners were arrested while conducting a peaceful and lawful protest in the Headquarters of the Plumbers' Union, Local # 2 located at 111 Fourth Avenue, in the Borough of Manhattan, City and State of New York.. The avowed purpose of said protest was to induce and persuade city, state and national officials, the public at large and the officers and members of the AFL-CIO and officers and members of Local # 2 to hault and cease a strike against an employer who had hired two (2) Puerto Rican and one (1) Negro construction worker. Said protest was also against the consistent failure of city officials to enforce Section 700 of the New York State Penal Law which prohibits racial discrimination in the construction industry. Said failure constitutes violation of Federal Laws providing for the equal rights of people.

(b) There appears to be an agreement, tacit or otherwise, amongst some of the Judges of the Criminal Court of the City of New York to utilize bail, conditions of parole pending trial and conditions of probation upon sentence after conviction as ameans of deterring petitioners and/or others in similar situations from exercising First Amendment Rights to secure Fourteenth Amendment objectives.

(c) That on April 22, 1964, with more than 300 arrests of demonstrators at or near the World's Fair, the Chief Administrative Assistant in the City's Criminal Court system, HON. LAWRENCE VETRANO, was quoted in the Long Island Star Journal 4/23/64 as having stated: "No one is walking out of here to go demonstrating again. Each is being held in bail of some sort." In fact, everyone of these demonstrators was held in bail of some sort at great expense to the sponsoring organizations.

(d) That no substantial steps have been taken to eliminate the denial of equal protection of the laws in any of the areas to which petitioners' protest was directed.

(e) That petitioners can receive no justice in a Court administered by a City and/or State which fails to grant equal protection of the laws as guaranteed by the Constitution and considers proper exercise of First Amendment Rights to secure Fourteenth Amendment objectives, criminal.

6. That your petitioners' activities and the activities they sought to have others join in consisted solely in the peaceful exercise of fundamental rights as an American citizen to Freedom of Speech, Freedom of Assembly and the right to petition the government for a redress of

grievances, all of which rights are inalienably guaranteed by the First and Fourteenth Amendments to the Constitution.

7. That no bond with good and sufficient surety is required to be filed herewith since this proceeding is criminal in nature.

WHEREFORE, petitioners file this petition for the removal of said proceedings from the Criminal Court of the City of New York to the United States District Court for the Southern District of New York and prays that said proceeding stand so removed.

Dated: July 23, 1964.

YOURS, ETC.,

JOHN E. SILVERBERG, ESQ.
15 Park Row
New York 38, New York

BERNARD JACKSON, ESQ.
401 Broadway
New York, New York

CHARLES T. Mc KINNEY, ESQ.
165 Broadway
New York, New York

Attorneys for Petitioners

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN E. SILVERBERG, being duly sworn, deposes and says:

That he is one of the attorneys for the petitioners herein and that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters, he believes it to be true.

Sworn to before me this
23rd day of July, 1964.

JOHN E. SILVERBERG

ROBERT THALER
Notary Public State of New York
No. 60-9310590
Qualified in Westchester County
Commission Expires March 30, 1966

Mo. No. 927

The People &c.,
Respondent,
vs.
Herbert Callender,
Appellant.

COURT OF APPEALS
SEPT. 29, 1966

DECISION

Motion for reargument denied.

Motion to amend the remittitur granted; return of remittitur requested and, when returned, it will be amended by adding therto the following: Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant contended that his conduct, which formed the basis of his conviction, was protected under the First and Fourteenth Amendments and, further, that Section 722 of the Penal Law of the State of New York as applied to him was unconstitutional. The Court of Appeals held that appellant's constitutional rights under the First and Fourteenth Amendments had not been violated, and that as applied to him Section 722 of the Penal Law was constitutional.

COURT OF APPEALS

OF THE STATE OF NEW YORK

- -

PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v.
HERBERT CALLENDER,
Defendant-Appellant.

- -

MOTION FOR REHEARING
TO
AMEND REMITTITUR

PLEASE TAKE NOTICE that upon the record on appeal filed herein and presented to the Court, and upon the argument of the appeal, and upon the decision of this Court on or about July 8th, 1966, and the remittiture, dated on or about July 8th, 1966 and the annexed affidavit of CARL RACHLIN, a motion will be made to this Court at the Courthouse in the city of Albany on the 26th day of September, 1966, at the opening of court on that day or as soon thereafter as counsel may be heard: for an order granting reargument so as to permit the Court to consider the contention of the Appellant that his conduct, which formed the basis of his conviction was protected under the FIRST and FOURTEENTH Amendments of the Constitution of the United States and that Section 722-b of the Penal Code of the State of New York as applied to him is unconstitutional, and for a further order amending the remittitur herein by including therein or adding thereto a certificate or other statement declaring that in the determination of this case this Honorable Court was required to and did pass on the foregoing Constitutional questions.

Yours, etc.,

CARL RACHLIN
Attorney for Appellant
38 Park Row
New York, New York 10

TO:

HON. FRANK S. HOGAN
District Attorney
New York County
155 Leonard Street

Clerk,
Criminal Court of City of New York
County of New York

COURT OF APPEALS

OF THE STATE OF NEW YORK

- -

PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

v. :

HERBERT CALLENDER, :

Defendant-Appellant :

:

- -:

State of New York)ss:
County of New York)

CARL RACHLIN, being duly sworn, deposes and says:

1. I am the attorney who has been engaged by the Appellant in the above entitled case to seek a petition for certiorari from the Supreme Court of the United States. This affidavit is made in support of the Appellant's motion to amend the remittitur, or to reargue, so that the record in this case will clearly reflect that this Court passed upon the Appellant's contention that his conviction under Section 722 of the Penal Law of the State of New York was in violation of his Constitutional rights under the FIRST and FOURTEENTH Amendments of the Constitution of the United States.

2. Such reargument or amendment of the remittitur is necessary in order that the defendants may properly perfect his contention in seeking review by the Supreme Court of the United States and obtaining from the Supreme Court of the United States a final determination as to whether the conviction affirmed by this Court was

in violation of his Constitutional rights.

3. I have communicated with the office of HON. FRANK S. HOGAN, District Attorney of New York County, counsel for the Respondent, and am authorized by Assistant District Attorney FREDERICK P. HAFETZ to state that this Court that counsel for the Respondent has no objection to an amendment of the remittitur herein.

There can be no serious doubt that the Appellant urged in this Court and in the Appellate Term below that the conviction was in violation of his Constitutional rights under the FIRST and FOURTEENTH Amendments.

Point (2.) of the Appellant's Brief in this Court contains such an assertion. Point (1.) of the Respondent's Brief answers and treats such an assertion.

If for any reason the Court did not consider and pass upon the Constitutional questions tendered by the Appellant's then the Appellant respectfully asks leave to reargue the case so that the Court may pass and consider upon his contention that his conviction is in violation of the FIRST and FOURTEENTH Amendments and that Section 722 of the Penal Code as applied to him is unconstitutional.

WHEREFORE, it is respectfully urged that this Court either grant reargument so as to consider the Constitutional questions proposed by the Appellant, to wit: Whether his conduct, which was the basis of his conviction was protected by the FIRST and FOURTEENTH Amendments of the Constitution of the United States and whether Section 722 of the Penal Code as applied to him is unconstitutional, or in the alternative, amend the remittitur to reflect that the Court did in fact pass upon and reject those contentions, so that the Appellant may properly perfect his contentions in applying to the Supreme Court of the United States for a writ of certiorari.

Carl Rachlin

CARL RACHLIN

Sworn to before me this

21st day of September, 1966

WALTER HOLDEN
NOTARY PUBLIC, State of New York
No. 24-6939910
Qualified in Kings County
Commission Expires March 30, 1968

IN THE SUPREME COURT OF THE UNITED STATES
BEFORE: HONORABLE STANLEY H. FULD
Associate Judge of the Court of Appeals
of the State of New York

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against--

HERBERT CALLENDER,

Defendant-Appellant.

The defendant-appellant, having been heretofore on the 25th day of November, 1964, been convicted of the offense of disorderly conduct (Penal Law Section 722 sub 1,2 and 3) at the Criminal Court of the City of New York, County of New York, and sentenced on the 13th day of January, 1965 to the workhouse for a term of 60 days, and upon appeal to the Court of Appeals of the State of New York, the judgement of conviction and sentence for the aforementioned offense having been affirmed on the 8th day of July, 1966,

And no previous application for a stay having been made,

And upon the consent of the District Attorney of New York County by Frederick Haifetz, Assistant District Attorney,

And in order that the Defendant-Appellant may have adequate opportunity to present his petition for certiorari to the Supreme Court of the United States,

And after hearing Carl Rachlin, Esq., attorney for the Defendant-Appellant it is hereby

ORDERED, that the order heretofore issued on the 8th day of July, 1966 be and it hereby is in all respects, stayed pending the hearing and determination of the merits of a petition for certiorari by the Supreme Court of the United States; and it is further

ORDERED, that the bail heretofore fixed in the sum of $1,000 for the defendant-appellant be and it hereby is continued; and it is further

ORDERED, that the stay shall become inoperative in the event that no petition for certiorari, is docketed within the requisite time period set forth by the rules of the Supreme Court of the United States, or by the 19th day of December, 1966, whichever is sooner; and it is further

ORDERED, that the original of this order be filed in the office of the Clerk of the Criminal Court of the City of New York, County of New York and that copies thereof be served upon the District Attorney of the New York County and the Clerk of the Court of Appeals of the State of New York forthwith.

(s) Stanley H. Fuld,
Associate Judge of the Court of
Appeals of the State of New York

Dated:

New York, New York
September 8th, 1966

STATEMENT PURSUANT TO RULE 5531 CPLR

COURT OF APPEALS, STATE OF NEW YORK

--x

PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

HERBERT CALLENDER, :

Defendant-Appellant. :

--x

1. The docket number of this case in the Criminal Court is C 14246/1964.

2. Defendant-appellant, HERBERT CALLENDER is represented by CARL RACHLIN and WILLIAM S. ELLIS, Esqs. Respondents, the People of the State of New York, are represented by FRANK S. HOGAN, Esq., District Attorney of New York County. No change in the parties has occurred.

3. The action was commenced in the New York City Criminal Court, County of New York.

4. The action was commenced by a criminal complaint, sworn to and filed on the fifteenth day of July, 1964, on which the defendant was arrested.

5. The complaint charged defendant with violation of Section 722, Subdivisions 1, 2 and 3 of the Penal Law. Defendant was tried and found guilty on November 25th, 1964 by the Hon. Mitchell J. Sherwin and was sentenced to sixty (60) days in the Work-house. Defendant Callender was released on a

Certificate of Reasonable Doubt.

6. This is an appeal by the defendant from an order of the Appelate Term of the Supreme Court of the State of New York, First Department, entered on or about January 21, 1966, affirming the conviction. Leave to appeal to the Court of Appeals was granted by Hon. Stanley H. Fuld, Associate Judge of the Court of Appeals, on February 9, 1966.

7. The appendix method is not being used on this appeal.

CERTIFICATE GRANTING LEAVE

STATE OF NEW YORK

COURT OF APPEALS

BEFORE: HON. STANLEY H. FULD, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

HERBERT CALLENDER,
Defendant-Appellant.

I, STANLEY H. FULD, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that in the record and proceedings herein questions of law are involved which ought to be reviewed by the Court of Appeals and pursuant to 520 of the Code of Criminal Procedure permission is hereby granted to the above named appellant to appeal to the Court of Appeals.

I further certify that in my opinion there is reasonable doubt whether the judgment of conviction will stand upon appeal to the Court of Appeals.

Bail as at present provided is fixed pending appeal to the Court of Appeals in the sum of $1,000.

Dated at New York, New York
February 9, 1966

/S/ Stanley H. Fuld
Associate Judge

Notice: Within 15 days from the date hereon an appeal must be taken and this certificate must be filed with the notice of appeal. An appeal is taken by filing in the clerk's office having

CERTIFICATE GRANTING LEAVE Cont'd.

judgment roll (trial court) a written notice in duplicate that appellant appeals to the Court of Appeals (522, Code Crim. Pro.) together with proof that another copy of notice of appeal has been served upon opposing counsel (521, Code Crim. Pro.). The appeal must be argued within 90 days from the date of the notice of appeal (536, Code Crim. Pro.)

NOTICE OF APPEAL TO COURT OF APPEALS --

STATE OF NEW YORK
COURT OF APPEALS
....x

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent

- against -

HERBERT CALENDER,
Defendant-Appellant.
....x

SIRS:

PLEASE TAKE NOTICE, that the defendant hereby appeals to the Court of Appeals from the judgment of the Appellate Term of the Supreme Court, for the First Department, dated on or about January 20, 1966 affirming the judgment of conviction rendered against him in the Criminal Court of the City of New York, County of New York, on the 13th Day of January, 1965, and from each and every part thereof, including orders denying the defendant's motions for a new trial and in arrest of judgment, and all other and intermediate orders made herein.

PLEASE TAKE FURTHER NOTICE, that this appeal is taken pursuant to leave granted by Hon. Stanley H. Fuld, a Judge of the Court of Appeals, on February 9, 1966, in which it was certified that there are questions of law involved which ought to be reviewed by the Court of Appeals.

Dated: February 23, 1966

Yours, etc.,

Carl Rachlin, Esq.
38 Park Row
New York, New York 10038

TO: Hon. Frank Hogan, Esq.
District Attorney, New York County
155 Leonard Street
New York, New York

Clerk of the Criminal Court
City of New York

ORDER APPEALED FROM --

At an Appellate Term of the Supreme Court, First Department, held on the County Court House, Borough of Manhattan, City of New York, on the 20th day of January 1966

Present:–Hon. SAMUEL M. GOLD, *J.P.*

" " LOUIS J. CAPOZZOLI

" " SAMUEL H. HOFSTADTER (dissenting) *Justices*

FILED
JAN 20
APPELLATE TERM

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

vs.

HERBERT CALLENDER,

Defendant **Appellant**

Rev. #422

An appeal having been taken to this court by Defendant **from a judgment of conviction of the Criminal Court of the City of New York, County of** New York**, after trial before Hon.** Mitchell J. Sherwin**, on the** 15th **day of** November **196**4**, upon the charge of** Viol. Sec. 722, subs. 1, 2, and 3 of the Penal Law**, and having been sentenced by Hon.** Louis Cioffi **on the** 13th **day of** January**, 196**5**, as follows:**

60 days in the Workhouse

and the said appeal having been heard and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the said judgment so appealed from be and the same is hereby affirmed.

Enter

Justice Appellate Term
Supreme Court, First Department

Appellate Term of the Supreme Court, First Department, NOVEMBER, 1965

Present:—**HON.** SAMUEL M. GOLD, **J.P.**

" LOUIS J. CAPOZZOLI,

" SAMUEL H. HOFSTADTER,

Justices.

FILED
N 20
APPELLATE TERM

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

vs.

HERBERT CALLENDER,
Defendant-Appellant.

No. 422

Appeal by defendant **from** a judgment of conviction **of the** Criminal **Court of the City of New York, County of** New York, after trial, of violating section 722, subdivisions 1, 2 and 3 of the Penal Law [disorderly conduct].

PER CURIAM:

Judgment of conviction affirmed.

I concur

I concur

I [redacted] dissent and vote to reverse the conviction and to dismiss the complaint
on a Dissenting memorandum

Dissenting Memorandum

People v. Callender November No. 422

HOFSTADTER, J.:

For the reasons stated in my dissenting opinion in People v. Penn et al., February, 1964, #45, 152 N.Y.L.J. 76, October 16, 1964, p. 16, affd. 16 N.Y. 581, motion to amend remittitur granted September 27, 1965, and in my dissenting memorandum in People v. Turner et al., May 1965, #145, 154 N.Y.L.J. 93, November 15, 1965, p. 16, , my view is that defendant's acts were constitutionally protected and did not constitute disorderly conduct within the purview of Penal Law, Section 722 constitutionally delimited. I therefore dissent and vote to reverse the conviction on the law and on the facts and to dismiss the complaint.

Nov/65

AFFIDAVIT OF NO OTHER OPINION

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

WILLIAM S. ELLIS, being duly sworn, deposes and says:

1. I am the attorney for both defendants-appellants, and am familiar with all the proceedings had herein.

2. No opinion has been rendered by the court appealed from in this case, except those which are included herein.

William S. Ellis

Sworn to before me this

_____ day of April, 1966.

CERTIFICATION BY ATTORNEY

Pursuant to Section 458 of the Code of Criminal Procedure and Section 2105 of the Civil Practice Law and Rules, the undersigned attorney for Defendant-Appellant, certifies that the foregoing record on appeal contains copies of the notice of appeal, complaint, minutes of the trial, minutes of the judgment rolls, and order and decision appealed from, and that the same has been compared by me with the originals and the same is a true and exact copy and transcript of the whole of such originals.

William S. Ellis

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

- against -

HERBERT CALLENDER

Defendant-Appellant

RECORD ON APPEAL

From the Appellate Term, First Department, of the
Supreme Court of the State of New York

William S. Ellis, Esq.
41 East 42nd Street
New York, New York

Carl Rachlin, Esq.
38 Park Row
New York, New York 10038

Attorneys for Defendant-Appellant

Frank S. Hogan
District Attorney, New York County,
Attorney for Respondent
155 Leonard Street
New York, New York, 10013

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STATEMENT PURSUANT TO RULE 5531 of C.P.L.R.

1. *The Docket Number in the Court below is C 14246/1964.*

2. *The names of the parties are THE PEOPLE OF THE STATE of NEW YORK vs. HERBERT CALLENDER.*

3. *The defendant was arrested on the 15th day of July, 1964 in the County of New York.*

4. *The action was commenced in Part 1C of the Criminal Court of the City of New York on the 15th day of July, 1964.*

5. *The defendant is charged with a Violation of Section 722, Subdivision 1, 2 and 3 of the Penal Law.*

6. *This appeal is taken from the Judgment of Conviction on the 25th day of November, 1964 by the Hon. Mitchell D. Schweitzer, and the sentence of sixty (60) days in the Work-house.*

7. *The appendix method is not being used.*

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST JUDICIAL DEPARTMENT
--X

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

:
HERBERT CALLENDER,
:
Defendant-Appellant.
:
--X

STATEMENT PURSUANT TO RULE 11 (2) (C) OF THE RULES OF THE APPELLATE TERM FOR THE FIRST JUDICIAL DEPARTMENT

--

The defendant was admitted to bail in the sum of One Thousand ($1,000.00) Dollars pursuant to a Certificate of Reasonable Doubt granted by the Hon. Mitchell D. Schweitzer, a Justice of the Supreme Court of

15 Jany 1963

the State of New York on the 13th day of January, 1965, and is still admitted to bail.

✓

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 2A
-----------------------------------X

THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

:

HERBERT CALLENDER,

:

Defendant.

:

-----------------------------------X

SIR:

PLEASE TAKE NOTICE, that the above named defendant hereby appeals to the Appellate Term of the Supreme Court, First Judicial Department from his conviction of a violation of Section 722, Subdivision 1, 2 and 3 of the Penal Law on January 13th, 1965 and was sentenced to serve sixty (60) days in the Work-houseon the 13th day of January, 1965, in the Criminal Court of the City of New York, and said defendant appeals from each and every part of said conviction and sentence.'

Dated: New York, N.Y., January 13th, 1965.

Yours, etc.,

NATHAN H. MITCHELL
Attorney for Defendant
Office & P.O. Address
225 Broadway
City of New York
Borough of Manhattan

TO:

FRANK S. HOGAN
District Attorney-New York County
155 Leonard Street, New York, N.Y.

Defendant's Address
1301 Boston Road
Bronx, New York

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

County of
ng Co - NNy all port

oled, the defendant was advised pursuant
1694b of the Penal Law.

OCT 1 9 1964
ANT NOTIFIED
10/20/64

MAURICE W.

ned to 11/10 Bail $ BC

oled, the defendant was advised pursuant to
1694b of the Penal Law.

OCT 2 9 1964
Date
ROBERT L. Judge.

ned to Nov 23 Bail $ Di
Final for trial

oled, the defendant was advised pursuant to
1694b of the Penal Law

NOV 10 1964
Date
LOUIS A. CIOFFI
Judge.

AS I. LANDERS
COURT REPORTER

11/23/64 BF Pub Serv
$500

DEFENDANT FAILED TO APPEAR
BAIL FORFEITED & WARRANT ISSUED

NOV 23 1964

SAMUEL J. OHRINGER

PART 2A

ALIE ALSTON
COURT REPORTER

Nov 25/64

Notify offices

PART 2A
NOV 24 1964

& PAPERS

11/10 11/13

SAMUEL J. OHRINGER

C14246

CRIMINAL COURT
OF THE CITY OF NEW YORK

2A

POLICE DEPT. RECORD ATTACHED

THE PEOPLE OF THE STATE OF NEW YORK
vs.
Herbert Callender

Address

93

Arraigned 7/15 , 1964

Burke 865 Judge.

M.S Det Sq Officer and Shield No.

PETER J. GALATI
COURT REPORTER

Assignment.

The defendant on being brought before me was informed of the within charge of
DC 1-2-3
of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone.

Judge.

Defendant pleads .... GUILTY

Date

Judge.

2E

Tried and found .... GUILTY

Date NOV 2 5 1964 , 19

FLORENCE G. CLARK
COURT REPORTER

SENTENCE

Fined $ .... or in default of payment
Imprisonment not to exceed .... day in Workhouse. Imprisonment in Workhouse for

Judge.

P.1

3E/ Exam 4

PC

NOV 2 5 1964

MITCHEL J.

FLORENCE G.
COURT REPORTER
FLORENCE G. CLARK
COURT REPORTER

2A

PAROLE REVOKED
BENCH WARRANT TO ISSUE
BAIL $ 500

4- 19

PRESIDING JUSTICE
LOUIS A. CIOFFI

Jan 13
for Def
Remanded

CASH BAIL POSTED ~~Dir. of Fin.~~ JAN 8 19

FLORENCE G. CLARK

ORDER THAT THE WITHIN CASH BAIL BE REFUNDED

I hereby certify that the within is a true

Date Judge

Copy of the Record on file at this Court

Refund Number Court Clerk

New York APR 26 1965

FINGERPRINT IMPRESSIONS OF THE DEFENDANT TAKEN BY

Carlotta Rossella
Sr. Court Clerk

Date Fingerprint Technician

No previous record in Criminal Court ☐
Defendant's previous record attached ☐
Police Dept. fingerprint record attached ☐

Notify D.A.
When def
brought in
for sentence

RECORD OF FINE PAID AND/OR COMMITMENT EXECUTED

LOUIS A. CIOFFI

Date $
Amount Collected

Def is sentenced
to 60 days in
workhouse

Above fine collected and/or commitment executed by
Cash Book entry by
Docket Book entry by

Complaint prepared by Coffey

Adjourned to Aug 4 1964 Bail $500 R

Part

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

JUL 15 1964

Date Judge.

BERNARD [illegible]

Adjourned to 8/6 Bail $ R

2A

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date 2PM Judge.

AUG [illegible] 1964

FRANCIS X. O'BRIEN

2A

Adjourned to Sept 14 Bail $ B C

Rem + Hosp

NATALIE ALSTON
COURT REPORTER

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

AUG 6 1964

ARTHUR [illegible]

Date Judge.

AUG 1 [illegible]

Committed

N.Y.C. Dep't

Hos [illegible] 8/6

OFFICIAL [illegible]

FINE PAID

Date Amount $

Collected by EDWARD D. CAIAZZO

Fines Book Entry by EDWARD D. CAIAZZO

Docket Book Entry by

Docket 36 C 14246

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part 1C, County of New York

THE PEOPLE of the STATE of NEW YORK
on the Complaint of

Sgt Denis V Burke 865 M

vs.

Herbert Callender M [illegible]

BAIL

1301 Boston Road Bronx

Defendant arraigned 7/15/ 1964

Hon. Judge.

Sgt Denis V Burke 865

M. S. Det Sqd Officer and Shield No.

Assignment.

The defendant on being brought before me was informed of the within charge of

DISORDERLY CONDUCT 1-2-3

of his right to communicate with relatives [illegible] by letter or telephone, free of charge [illegible] to the aid of counsel at every stage of [illegible] and before any further proceedings [illegible] to an adjournment to procure counsel o[illegible] with anyone.

JUL 15 1964

EDWARD [illegible]

Defendant pleads NG [illegible]TY

Date AUG 5 1964

FRANCIS X. O'B[illegible]

Tried and found [illegible]

Date 19

Judge.

SENTENCE

Fined $ or in default of payment, [illegible]ment not to exceed day in W[illegible]

Committed to Workhouse for

2A

Shyt 2

Complaint prepared by ....

Adjourned to Oct 6 .... Bail $ BC

Fed Ct Transfer [illegible]

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

SEP 14 1964 .... RL

Date REUBEN LEVY Judge.

~~ALAN SCHIFFMAN~~
COURT REPORTER

2A

Adjourned to 11/5/64 .... Bail $ BC

Neg Pro Matter Refer Fed Ct

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

OCT 6 1964 .... MWG

Date MAURICE W. GREY Judge.

BERTHA C[illegible]
COURT REPORTER

Adjourned to .... Bail $ ....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date .... Judge.

D. A. REC'D [illegible]

10/6

FINE PAID

Date .... **Amount $** ....

Collected by ....

Fines Book Entry by ....

Docket Book Entry by ....

38

Week End/Night Part Docket | **Docket** C14246

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part ...., **County of** ....

THE PEOPLE of the STATE of NEW YORK
on the Complaint of

~~HERBERT~~

vs.

HERBERT CALLENDER

Defendant arraigned 7/15 19....

Hon. ....
Judge.

BURKE
Officer and Shield No.

HS - DET. SQD
Assignment.

The defendant on being brought before me was informed of the within charge of

DISORDERLY CONDUCT -1-2-3

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone.

....
Judge

Defendant pleads ....GUILTY
Date ...., 19....
....
Judge

Tried and found ....GUILTY
Date ...., 19....
....
Judge

SENTENCE

Fined $.......... **or in default of payment, imprisonment not to exceed**..........**day in Workhouse.**
Committed to Workhouse for..........**days.**

....
Judge.

Form 11-75M 701524(61)

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1C, County of New York

STATE OF NEW YORK,
COUNTY OF New York } ss.:

Sgrt Denis V. Burke 865 Det Bureau Man So being duly sworn, says that at 10.55 A on July 15, 1964, at Cooridor leading to the mayors Office City Hall in the County of New York, City and State of New York, the defendant Herbert [illegible]r Callender

committed the offense of disorderly conduct in violation of Section 722, Sub-division 1-2-3 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did appaer at the gate leading to the mayors office and did request the asistance of the deponent in making a citisens arrest of the mayot for violations of sections 1838 & 1865 of the P.L. . The deponent refused to assit in the arrest and advised him that in the opinion of th Corp Counsel and the legal bureau of the P. D. that no violation of law existed and such an arrest would be illegal. When advised of the above and informed that the police would not assist in such an arrest, the defendant was asked on two separate occasions to leave because by his actions he was interfering with the normal conduct of city business at the mayors office and with persons having official business thereat. The defendant refused to leave the corridor saying that he would remain therat until he o would effect the arrest of the mayor. The defendant action and statements caused a crowd to collect.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Denis V. Burke

Sworn to before me,
7/ 15/, 1964

Judge.
[illegible]D. CAIAZZO

Pending Leaves: (see R & P 14/26.0)
Vacation Pending
Other Leave:

SAME TITLE

AFFIDAVIT OF NO OPINION

Pursuant to C.P.L.R. 3106, and acting under the penalties of perjury, the undersigned attorney for the defendant-appellant hereby affirms that there has been no opinion rendered by the Judge who presided at the trial of this action, except the opinion heretofore set forth herein.

Dated: August, 1965.

Walter H Mitchell

SAME TITLE

AFFIDAVIT OF NO OPINION

Pursuant to C.P.L.R. 3106, and acting under the penalties of perjury, the undersigned attorney for the defendant-appellant hereby affirms that there has been no opinion rendered by the Judge who presided at the trial of this action, except the opinion heretofore set forth herein.

Dated: August, 1965.

Walter H Mitchell

SAME TITLE

IT IS HEREBY STIPULATED AND AGREED by and between the attorney for the defendant-appellant and the District Attorney that the appeal in the above entitled action shall be limited to the proceedings had on the trial and sentence, and it is

FURTHER STIPULATED AND AGREED that the arraignment and/or adjournment minutes need not be reproduced since no error is assigned with respect to either or both, and that any question with respect thereto is waived. In the event the District Attorney deems it necessary, the arraignment and/or any adjournment minutes shall be included in the record, and it is

FURTHER STIPULATED AND AGREED that the exhibits, if any, need not be made part of the record but that the originals will be submitted to the appellate court on or before the call of the calendar.

Dated: August 17th, *1965.*

Nathan H Mitchell
Attorney for the defendant-appellant

F.S. Hogan By Milford M. [illegible]
District Attorney

To be argued by
WILLIAM S. ELLIS

Court of Appeals

Of the State of New York

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

AGAINST

HERBERT CALLENDER,
Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT

CARL RACHLIN,
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New York, N. Y. 10038.

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New York, N. Y. 10017,
Attorneys for Defendant-Appellant.

Of Counsel:

STEPHEN M. NAGLER, ESQ.,
NATHANIEL MITCHELL, ESQ.,
DAVID WEISMAN, ESQ.

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To be argued by
WILLIAM S. ELLIS

Court of Appeals

OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

AGAINST

HERBERT CALLENDER,
Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT

Statement Pursuant to Rule 5531 CPLR

This is a criminal prosecution for the offense of disorderly conduct in violation of Section 722, Subdivisions 1, 2, and 3, of the Penal Law.

Defendant was arrested in the County of New York on July 15, 1964, and a complaint was issued against the defendant on the same date.

Defendant was tried before the Honorable Mitchell J. Sherwin, Judge of the Criminal Court of the City of New York, County of New York on November 25, 1964. The defendant was found guilty of the offense of disorderly conduct in violation of Section 722, Sub-divisions 1, 2 and 3 of the Penal Law on November 25, 1964.

The defendant was sentenced on January 13, 1965 by the Honorable Louis A. Cioffi, Judge of the Criminal Court of the City of New York, County of New York, to sixty (60) days in the Work-house. The docket Number of this case is C14246/1964.

The defendant duly filed a notice of appeal with the Appellate Term of the Supreme Court, First Department. The judgment of conviction was affirmed, with one justice dissenting.

On February 9, 1966, the Honorable Stanley H. Fuld, Judge of the Court of Appeals, granted leave to file an appeal from the decision of the Appellate Term of the Supreme Court. On February 23, 1966, the notice of appeal was duly filed herein.

William S. Ellis, Esq., 41 East 42nd Street, New York, New York, Carl Rachlin, Esq., 38 Park Row, N. Y., N. Y. appear for the defendant-appellant. The District Attorney of the County of New York appears for the respondent.

There has been no change of parties, but there has been a change of attorneys in that the aforesaid William S. Ellis, now appears for the defendant-appellant.

This appeal is being prosecuted upon the complete record. The appendix method is not being used.

Decisions Below

The defendant was convicted of the offense of disorderly conduct after a trial before the Criminal Court of the City of New York, County of New York, Mitchell J. Sherwin, J., presiding. The decsion was rendered on November 25, 1964, after trial upon a finding that the defendant had violated Sub-divisions 1, 2, and 3 of Section 722 of the Penal Law. The trial court rendered no opinion.

The judgment of conviction was affirmed by the Appellate Term of the Supreme Court, First Department on January 20, 1966, with no opinion being rendered by Justices Gold and Capozzoli. However, Justice Hofstadter rendered a dissenting opinion which read in part as follows:

> "* * * my view is that defendant's acts were constitutionally protected and did not constitute disorderly conduct within the purview of Penal Law, Section 722, constitutionally delimited. I therefore dissent and vote to reverse the conviction on the law and on the facts and to dismiss the complaint" (R. p. 67).

Applicable Statutes

The relevant portions of Section 722 of the Penal Law are as follows:

> "Disorderly conduct
>
> "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> "1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior;
>
> "2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

"3. Congregates with others on a public street and refuses to move on when ordered by the police;

"4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd; * * *"

The Complaint

The complaint stated in part as follows:

> "* * * the defendant, Herbert Callender, committed the offense of disorderly conduct in violation of Section 722, Sub-divisions 1, 2, and 3 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did appear at the gate leading to the Mayor's office and did request the assistance of the deponent in making a citizen's arrest of the Mayor for the violation of Sections 1838 and 1865 of the P. L. The deponent refused to assist in the arrest and advised him that in the opinion of the Cor. Counsel and the legal bureau of the P. D. that no violation of law existed and such an arrest would be illegal. When advised of the above and informed that the police would not assist in such an arrest, the defendant was asked on two separate occasions to leave because by his actions he was interfering with the normal conduct of city business at the Mayor's office and with persons having official business thereat. The defendant refused to leave the corridor saying that he would remain thereat until he would effect the arrest of the Mayor. The defendant and statement caused a crowd to collect."

Questions Presented

1. **Did the conduct of defendant Callender constitute disorderly conduct when he was present on lawful business, attempting to persuade others of the validity of his point of view and when no prospect of a breach of peace was evident?**
2. **Was the defendant's peaceful conduct in trying to convince others of the validity of his view a type of conduct protected by the First and Fourteenth Amendments?**

Statement of Facts

On July 15, 1964 at about 10:00 A. M., the defendant Herbert Callender, a field secretary for the Congress of Racial Equality (hereinafter referred to as CORE) went to City Hall in the company of two others. Prior to his arrival at City Hall, the Mayor and the Corporation Counsel had been informed of the intention of the defendant, who was acting on the advice of legal counsel concerning the legality of his proposed act (R38), to challenge the constitutional authority of the City of New York to use directly or indirectly public funds for public projects where the contractors indulged in discriminatory practices (R. 35). The City authorities were also informed in advance that this practice would be constitutionally challenged by the making of a citizen's arrest upon the Mayor (R. 13, 33).

In response to the notice given by CORE, the Corporation Counsel had prepared an advisory opinion as to the rights of the City in this matter and had carefully briefed the police personnel on the scene of City Hall (R. 13, 25, 33, 34).

At the time Mr. Callender arrived at City Hall, reporters and TV cameramen were present from various news media to cover the event (R. 14). The City Hall area was well patrolled and various officials had been alerted to the arrival of Mr. Callender. As he approached City Hall, an Inspector of the Police Department, who evidently anticipated Mr. Callender's arrival, directed him to the Mayor's office (R. 26).

According to the testimony of Sergeant Burke, in order to go to the Mayor's office, a long distance from any public street (R. 10, 11), one must walk into a small courtyard (described as a park) and then into a corridor to the left of the courtyard, which is approximately 30 by 50 feet (R. 11, 12, 18). At the entrance of the corridor, which is approximately eight feet wide and 12 feet long, there is a gate (R. 11, 12). Behind this gate, there is a police desk where one must identify one's self and one's business with the Mayor. After gaining entrance through the gate, one proceeds to the waiting room of the Mayor and requests permission to see him (R. 11, 12).

Mr. Callender proceeded to this gate (R. 12, 13). There is no evidence to indicate that he was accompanied by any one. The defendant then approached Police Sergeant Burke, who was stationed at the police desk, and told him that he wished to effect the arrest of the Mayor pursuant to Section 1838 and 1865 of the Penal Law, and he requested Sergeant Burke to assist him in making the citizen's arrest (R. 13). Sergeant Burke replied that he had been advised by the Corporation Counsel and by the Legal Bureau of the Police Department that such an arrest would be illegal, and he refused to assist Mr. Callender (R. 13). The testimony of both Sergeant Burke and Lieutenant Delehanty, another police officer on the scene, depicted the conversations and activities of Mr. Callender as what may be described as calm and polite (R. 29).

During this conversation between Mr. Callender and Sergeant Burke, TV camera men were placing their microphones between the two men in order to record the conversation (R. 13, 14, 38, 39), and reporters also surrounded the two men in order to hear their words. Sergeant Burke testified, "There were many camera men, reporters and men with tape recorders there" (R. 14). Sergeant Burke testified that he estimated that there were 30 people in the area at the time (R. 17), and according to Lieutenant Delehanty, his estimate was that there were approximately 50 people present (R. 30). At no time does the record reveal any effort of the police to ask anyone to leave the area other than Callender.

At this time, Mr. Callender then approached Lieutenant Delehanty and asked him to assist in making a citizen's arrest of the Mayor (R. 25). Lieutenant Delehanty made the same statement as Sergeant Burke and refused to assist Mr. Callender (R. 25). Sergeant Burke then approached Mr. Callender and told him that he was causing a crowd to collect and asked him to leave. Sergeant Burke testified that Mr. Callender refused to leave (R. 17). Mr. Callender testified on direct examination as follows:

> "Sgt. Burke came out and walked up to me and asked me whether or not I was going to leave, and I said, well, first let me explain. I am not here to engage myself in any civil disobedience and I am not here to disrupt anything, but I am here to make a citizen's arrest and I believe that is my right, and that I was willing to wait until that arrest could be effected when some police officer could assist me with it. I was willing to try to find at least one. He said well, if you don't leave I am going to put you under arrest. I asked him again, at this time

> whether or not he would assist me, and he said, all right you are under arrest" (R. 34).

Lieutenant Delehanty was asked on cross-examination as follows:

> "Q. Did you at any time hear Mr. Callender say anything to the waiting people that was abusive or offensive to them."
>
> "A. No, I did not" (R. 29).

Both Sergeant Burke and Lieutenant Delehanty were asked whether they had received any complaints from any one present of disturbance, annoyance or interference, (R. 21, 28) or whether any one had requested permission to enter the gate leading to the Mayor's executive offices (R. 21, 28). They both said that no such complaints had been made, and that no such request had been made (R. 24, 28). No witnesses were produced by the State who complained of being annoyed, disturbed or inconvenienced by Mr. Callender's presence. The testimony also indicates that Mr. Callender was alone during this entire episode, and that he had not congregated with any one else. Neither does it appear that anyone in the area at this time committed any disorderly act, nor that anyone came to view the scene who was not present at the time Mr. Callender arrived.

Lastly, it also developed on cross-examination that a group of people who were to be present at the signing of the Minimum Wage Law by the Mayor were being escorted upstairs to await the opening of the reception room where the Mayor was to sign this bill (R. 28, 29). There is no evidence that these people were scheduled to go through the area in which Mr. Callender was standing nor is there any evidence that any change in program was made or attempted to be made as a result of Mr. Callender's presence.

As for any crowd present, the record shows that the only people known to have present on the scene were: (1) Mr. Callender, (2) Officers Burke and Delehanty, and (3) reporters, photographers and news media personnel. This was the alleged crowd. The gathering of even larger groups of this sort is acknowledged to be a common occurence, in this part of City Hall.

Lastly, and most important, not only is the testimony devoid of any evidence to permit any inference of fear of violence, or breach of the peace but indeed the evidence clearly shows that Mr. Callender's presence was regarded as an attempt to test legally the Mayor's authority to make certain appropriations.

At the time of Mr. Calender's arrest, he was doing nothing except trying to communicate an idea, and to request police assistance and to persuade a policeman that his view was valid and deserving of assistance and support.

On this set of facts, in which Mr. Callender on the advice of counsel tried through a citizen's arrest to test the constitutionality of the Mayor's authority to make certain appropriations, Mr. Callender was arrested and convicted of the charge of Disorderly Conduct, Section 722, Subdivisions 1, 2, and 3. He was sentenced to 60 days in the Work House.

ARGUMENT

POINT I

The People failed as a matter of law to prove the guilt of the defendant beyond a reasonable doubt in that there was no evidence to prove the essential elements of any subdivision of Section 722 charged herein.

A review of the evidence presented by the People necessitates the conclusion that the incident involving the defendant was a good faith attempt to test the constitutionality of certain appropriations of the City of New York, involving an industry well known for its discrimination against Negroes (*Gaynor* v. *Rockefeller,* 15 N. Y. 2d 120 (1965)) and that it was regarded as such by all concerned. And the evidence further suggests that the City employed Section 722 as all inclusive not because the defendant was in fact breaching the peace, but because the incident, though harmless, was embarrassing. Such an inclusive and illegal exercise of Section 722 cannot stand in view of the failure of the evidence adduced to support the charges, and the constitutional safeguards which surround conduct such as that of the defendant.

Each witness testified that he had been informed of Mr. Callender's arrival and his purpose. The Corporation Counsel and the Legal Department of the Police Department had been informed and studied the legality of Mr. Callender's proposed action. These same agencies had informed the police stationed at City Hall that they regarded the proposed citizen's arrest to be made by the defendant as illegal. And, then, when the defendant did arrive, his futile attempt to find a policeman to assist him in his proposed citizen's arrest assumed an ironical twist. It was that the defendant who was seeking the assistance of the police was instead arrested by the police for the very fact of asking assistance.

These conclusions are amply confirmed by a review of the evidence adduced in support of the essential elements of the first four subdivisions of Section 722 of the Penal Law.

(a) Section 722(1)

In reference to Subdivision 1, which requires "offensive, disorderly, threatening * * * language, conduct or behavior", the record is completely devoid of any evidence that the defendant employed offensive or disorderly language or behavior. Indeed, his very words belie any such intent to employ such language or conduct. "I am not here to engage myself in any civil disobedience and I am not here to disrupt anything, but I am here to make a citizen's arrest and I *believe* that is my right" (emphasis added). The testimony of Sergeant Burke makes no reference to offensive language or behavior. In fact, Lieutenant Delehanty was asked, "Did you at any time hear Mr. Callender say anything to the waiting people that was abusive or offensive to them?", and he answered, "No, I did not." From such unequivocal evidence as this, there can be little question that the People did not prove the essential elements of subdivision 1 of Section 722 of the Penal Law.

(b) Section 722(2)

Nor can the People take any comfort from the evidence adduced in reference to the essential elements of Subdivision 2. This subdivision requires that the defendant act "in such a manner as to annoy, disturb, interfere with, obstruct or be offensive to others". The testimony does everything but prove a manner offensive to others.

Sergeant Burke (R. 29) and Lieutenant Delehanty stated that no complaints were received from any person that he was being obstructed or annoyed by the defendant's conduct.

> "Q. Did anyone complain that I am trying to get through to the Mayor's Reception, or trying to get through to the Mayor's office to you?"
>
> "A. No, they did not * * *."
>
> "Q. Did you at any time hear anything from the office on the inside of the desk, say, there are people who are trying to get in but they can't?"
>
> "A. Not to my knowledge" (R. 28).

Indeed, when Lieutenant Delehanty was questioned on cross-examination about the alleged interference with the orderly business of City Hall, he admitted that at the time of the presence of the defendant, the Mayor was already engaged in official business (R. 29) and "people that were there for the signing of the minimum wage law were being escorted upstairs to await the opening of the reception room where the Mayor was going to sign the local laws and minimum wage law". Thus, not only does the evidence show no complaints by any persons, but also that no one had an appointment to see the Mayor in his office at that time.

The record is devoid of any indication that the activities of the defendant caused inconvenience, disturbance or interference with the policemen. Actions which may merely annoy a police officer in the performance of a duty can not be considered disorderly conduct. *People* v. *Weissman,* 138 Misc. 542, 247 N. Y. S. 372 (1930). See also, *Thompson* v. *The City of Louisville,* 362 U. S. 199, 206 (1960). Lastly, it cannot be claimed that the reporters, who really seemed to be the only persons standing around the defendant, trying to take pictures, sticking microphones in between Sergeant Burke and the defendant, were interfered with. The evidence tends to suggest that if there was congestion in the area surrounding the defendant, the reporters were the ones who caused this not uncommon occurrence, and that the police indicated no concern over the conduct of the reporters, nor did they attempt to control it.

From the evidence, it appears that the only testimony to sustain a conviction under subdivision 2 is the officer's statement that "he obstructed the entrance to the hall" (R. 117). Such a statement alone has been held by this Court to be insufficient. In *People* v. *Carcel,* 3 N. Y. 2d 327, 165 N. Y. S. 2d 113 (1957), this court stated:

> "* * * the courts have indicated that something more than a mere inconveniencing of pedestrians is required to support a conviction under subdivision 2 * * *. Indeed the only evidence upon which the conviction might be predicated was the arresting officer's simple statement that the defendants 'were blocking the pedestrians' right of way'. That evidence we hold to be insufficient. * * *"

In *People* v. *Nixon,* 248 N. Y. 182, 161 N. E. 463 (1928), this court stated:

> "* * * As yet bad manners have not been made punishable by imprisonment * * * there is nothing to show that any person could have regarded the defendants' conduct as a threat or as calculated to coerce or impede anyone" (p. 465).

In a case similar to the one at bar, Mr. Justice Fortas in a concurring opinion stated:

> "In my view, there is nothing in the facts which justified an arrest and conviction. Prior to the of-

> ficer's command the situation was such that a small group of people occupying one-half of the sidewalk were engaged in orderly conversation. Promptly upon the officer's command, the group began to disperse and only Shuttlesworth remained. He, alone, cannot be held to have blocked the sidewalk. His rhetorical questions may have irritated the patrolman; but a policeman's lot is not a happy one—and certainly, in context, Shuttleworth's question did not rise to the magnitude of an offense against the laws of Alabama." *Shuttlesworth* v. *City of Birmingham,* 382 U. S. 87, 101 (1965).

The evidence to sustain subdivision two fails to reveal who was annoyed or interfered with, and in what manner any one was annoyed or interfered with. Such a record cannot sustain a conviction under this subdivision.

(c) SECTION 722(3)

In order to sustain a conviction under Penal Law Section 722, subdivision 3, the evidence must establish three distinct elements: first, that the defendant congregated with others; second, that the said congregating took place on a public street; and, third, that the defendant refused to move on when ordered by the police. The evidence fails to sustain anyone of these three elements.

In the case at bar, no evidence was presented to the court to indicate that Mr. Callender was accompanied by any other person when he entered City Hall and approached the police desk in the corridor leading into the Mayor's office. The testimony of the two police officers concerns only the defendant.

In defining the term "congregate" in this subdivision of the Penal Law, the Court of Appeals has specifically determined that "congregate" means at least three persons acting in concert. *People* v. *Carcel,* 3 N. Y. 2d 327, 165 N. Y. S. 2d (1957). In that case, this court at p. 333 spoke as follows:

> "The term 'congregating' implies and is usually applicable to the coming together of a considerable number of persons * * * or a crowd * * * and a crowd has been defined as a throng, multitude or great number of persons (citation omitted). The term 'congregates with others', as used in the statute, requires at the very least three persons assembling at a given time and place."

In the case at bar, Mr. Callender was alone.

In reference to the congregating taking place in a public street, there is no evidence concerning that element. The events referred to in the complaint occurred in a side corridor within the confines of City Hall, to which access was under the complete control of the police (P. 32). A perusal of the cases suggests no extension of the definition of "public streets" to the extent required in the case at bar. *People* v. *Hipple,* 263 N. Y. 242, 188 N. E. 729 (1934), stands for the general proposition that disorderly conduct is limited to conduct in public streets. This concept has been extended to include public areas adjacent to the streets and in view thereof. *People* v. *Fox,* 30 Misc. 2d 403, 219 N. Y. S. 2d 218 (1961). And, there are numerous cases which exclude from the scope of subdivisions (3) secluded and private places remote from the view of the public, *People* v. *Dawson,* 23 Misc. 2d 102, 200 N. Y. S. 2d 974 (1960); *People* v. *Krull,* 18 Misc. 2d 1027, 194 N. Y. S. 2d 75 (1959); *People* v. *Chase,* 13 Misc. 2d 300, 178 N. Y. S. 2d 19 (1958).

It is only after the "congregating with others on a public street" has been proved that refusal to move on when ordered by the police will warrant a conviction of disorderly conduct under subdivision three. See *People v. Carcel, supra,* p. 333. The mere giving of an order by a police officer can not make conduct, otherwise lawful, unlawful. In the case at bar, even if it be assumed that the first two aforesaid elements have been proved, still there is no evidence of refusal to move. At most, the defendant was argumentative in trying to persuade the police officers to assist him in making a citizen's arrest. Argumentativeness is not refusal. In *Thompson v. City of Louisville,* 362 U. S. 199, 205, 206 (1960), the Supreme Court in reviewing a conviction for disorderly conduct stated:

> "The only evidence of 'disorderly conduct' was the single statement of the policeman that after petitioner was arrested and taken out of the cafe he was very argumentative. There is no testimony that petitioner raised his voice, used offensive language, resisted the officers or engaged in any conduct of any kind likely in any way to adversely affect the good order and tranquility of the City of Louisville. The only information the record contains on what the petitioner was 'argumentative' about is his statement that he asked the officers 'what they arrested me for'."

(d) SECTION 722(4)

Lastly, the People failed to prove the essential elements of Section 722(4) which deals exclusively with activities which cause a crowd to collect. Absent a crowd, no violation of this subsection can occur regardless of the surrounding circumstances. The mere presence of a substantial number of people does not by itself constitute a "crowd". Before a group can fall within that definition, a determination must be made as to the surrounding circumstances and the composition of the group. See *People* v. *Phillips,* 245 N. Y. 401, 157 N. E. 508 (1927), and also *People* v. *Kiernan,* 6 Misc. 2d 245, 26 N. Y. S. 2d 291 (1940).

The evidence in the case at bar indicates that the so-called crowd in City Hall on July 15th was composed of the defendant, a group of reporters, TV men and several policemen. It is suggested that such a group does not constitute a crowd. In *People* v. *Kiernan, supra,* fourteen members of Jehovah's witnesses paraded along a street handing out leaflets. A "crowd" of approximately fifty persons followed alongside and behind. Reversing the convictions of the demonstrators, the court addressed itself to Section 722(4) saying:

> "There was, in my opinion, no 'crowd' within the meaning of the statute as defined in *People* v. *Phillips, supra.* There were spectators, to be sure, for there was curiosity to be satisfied, as was natural. But there was no 'assemblage' until they were halted by the police whereupon, although protesting that they were acting within their rights, they peaceably submitted" (p. 266).

The same analysis is equally applicable to the case at bar. The assemblage of people were merely spectators present on business, reporting a newsworthy event, as they do at City Hall on nearly every business day. The laws of the State of New York specifically recognize the special character of reporters and photographers and provides special protection to them under Section 244 of the Penal Law. Under the circumstances it cannot be said that evidence was presented at trial establishing the presence of a "crowd" in City Hall.

If this court were to find that there was a crowd, there is no support in the record to sustain a finding that the crowd collected as a result of the defendant's activities. The persons were there when he arrived. In fact, Sergeant Burke stated: "Mr. Callender then spoke into some tape recorders. There were many cameramen, reporters and men with tape recorders" (R. 14). And Lieutenant Delehanty testified that other persons who had come to City Hall for the signing of the Minimum Wage Law had been directed upstairs to the counsel room to wait until it was time for the signing of the said bill (R. 29).

From the total record, one can only conclude that the group surrounding the defendant consisted of reporters who were present prior to the arrival of the defendant and who were attempting to cover a story. The defendant can not be held criminally responsible for their presence. In *People* v. *La Sister,* 9 Misc. 2d 518, 170 N. Y. S. 2d 702 (1958), the court reversed the conviction on the ground that the evidence was insufficient since there were indications that the crowd was present and had collected prior to the defendant's arrival. In *People* v. *Suits,* 20 Misc. 2d 626, 195 N. Y. S. 2d 464 (1960), the Court reversed the conviction stating:

> "The record fails to show that the verbal exchange between the officers and the defendant attracted any of the public and that those who heard the conversation were already present at the time it took place" (p. 626).

Indeed, the only reasonable basis for upholding the gathering of a crowd as the foundation for a disorderly conduct conviction is that the crowd provides a threat of a "breach of the peace". The very function of representatives of the press and police officers who were the only ones present, militates against any possibility of a "breach of the peace".

POINT II

If this Court were to find that a breach of the peace occurred in the case at bar, such a finding would result in an unconstitutional application of Section 722 of the Penal Law.

If this court were to find that the People had met its burden of proof in reference to Section 722(1) (2) (3) and (4), it is still required that the People prove the existence of a breach of the peace or circumstances whereby a breach of the peace might be occasioned.

It is urged on this court, first, that a breach of the peace as it has been interpreted by this court can not be sustained by the evidence presented by the People, and, second, that if there were to be such a finding, it would result in an unconstitutional application of Section 722 of the Penal Law.

This court has consistently held that in order for an act to be punishable under Section 722 (1) (2) (3) and (4), a breach of the peace must have occurred. *People* v. *Carcel, supra; People* v. *Nixon, supra; People* v. *Most*, 171 N. Y. 423, 64 N. E. 175 (1902); *People* v. *Harvey,* 307 N. Y. 588, 123 N. E. 2d 81 (1954).

In *People* v. *Carcel, supra,* p. 331, this court said, as to what would constitute a breach of the peace:

> "The common law, definition of 'breach of peace', though not controlling, is helpful in ascer-

> taining the nature of the acts proscribed by the statute. In *People* v. *Most,* 171 N. Y. 423, 429 it was defined as a 'disturbance of public order by any act of violence or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community' * * * *Cantwell* v. *Connecticut,* 310 U. S. 296, 308 * * *. Guided by this definition the courts have indicated that something more than a mere inconveniencing of pedestrians is required to support a conviction under subdivision 2."

This language states that something far more serious than the innocent and inoffensive action of the defendant herein is contemplated. In conveniencing pedestrians or vehicular traffic or lack of good manners or taste does not suffice. *People* v. *Nixon, supra,* p. 187-188.

All the testimony indicates that defendant was calm and polite; that he was acting on the advice of counsel; that he believed the proposed arrest would raise the issue of the legality of the Mayor's authorization for the appropriation of funds. His conduct was not offensive. Indeed, the defendant, the Corporation Counsel, the Legal Bureau of the Police Department, the police and all the reporters present knew that the defendant was attempting to make a test case, and that there was no danger of disruption of the quiet of the community. On such facts, it is suggested there can be no finding of a breach of the peace. Indeed, when one considers the factual situations in recent cases in which the Supreme Court has reversed judgments of conviction on the charge of disorderly conduct, *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Fields* v. *South Carolina,* 375 U. S. 44 (1963); *Cox* v. *Louisiana,* 379 U. S. 536 (1965); *Garner* v. *Louisiana,* 368 U. S. 157 (1961), it can hardly be contended that such conduct as the case at bar could sustain a conviction of disorderly conduct.

If this court finds that the evidence sustains a finding of a breach of the peace as defined by this court in numerous decisions, then it is contended that such a finding results in an unconstitutional application of the statute. In other words, the statute is being so broadly and vaguely interpreted as to sweep within it conduct constitutionally protected.

At this point, it is necessary to define specifically the conduct of the defendant at the time of arrest. Though he intended to execute a citizen's arrest of the Mayor, he never reached that point. To attempt, therefore, to deal with what the situation would have been if the defendant had confronted the Mayor and convinced a policeman to assist him is to deal with a hypothetical question and thus ask this court for an advisory decision. However, that is not the issue.

The issue in terms of conduct is that at the time of arrest the defendant was attempting to persuade by means of speech some police officer that the City was disbursing funds for projects in which discriminatory practices took place, that this expenditure resulted in an illegal appropriation of funds and thus a felony, and that he wished because of this suspected illegality of appropriation of public funds to raise the issue by means of a citizen's arrest. At the time of his arrest, the defendant had tried to persuade, Sergeant Burke and Lieutenant Delehanty, and his testimony indicated a desire to speak to other policemen on duty to see if he could persuade one of them (R. 33, 34). The defendant's testimony reads in part as follows:

> " * * * but we still talked and I asked him whether or not he was acquainted with the law in re-

> gards to a police officer's duty to assist a citizen in a citizen's arrest. I asked him whether he was deciding or whether the Corporation Counsel was deciding the guilt of my charge. He said no. All I know is that the Corporation Counsel tells me that this is illegal and I can't go through with it * * * Sgt. Burke came out and walked up to me and asked me whether or not I was going to leave, and I said, well, first let me explain. I am not here to engage myself in any civil disobedience and I am not here to disrupt anything, but I am here to make a citizen's arrest, and I believe that it is my right, and that I was willing to wait until that arrest could be effected when some police officer could assist me with it. I was willing to try to find at least one. He said, well, if you don't leave I am going to put you under arrest. I asked him again, at this time whether or not he would assist me, and he said, all right you are under arrest."

At the time of arrest the events had not evolved beyond the stage of communication and persuasion by means of speech. Such an activity is protected and comes within the protective fold of the first and fourteenth amendments. *Terminiello* v. *City of Chicago,* 337 U. S. 1 (1949). In that case, the Supreme Court stated:

> "Speech is often provocative and challenging. It may strike at the prejudices and preconceptions and have profound unsettling effects as it presses for an acceptance of an idea. That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment * * * there is no room under our Constitution for a more restrictive view. For the alternative would

> lead to standardization of ideas either by legislatures, courts, or dominant political or community groups" (pp. 4-5).

In *Cox* v. *Louisiana,* 379 U. S. 536 (1965), the Supreme Court on the facts in that case construed a disorderly conduct statute similar to the statute before this court as unconstitutionally vague in its broad scope. And the line of reasoning behind this doctrine was lucidly set forth by Justice Harlan in *Garner* v. *Louisiana,* 368 U. S. 157 (1961). In his concurring decision, Justice Harlan stated; quoting first from *Cantwell* v. *Conn.,* 310 U. S. 296, 307, 308.

> "'Although the contents of the record not unnaturally aroused curiosity, we think that, in the absence of a statute normally drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question' * * *
>
> "But when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount interest, would be within the range of freedom as assured by the 14th Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause normally drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state" (p. 202).

In the instant case, the defendant was protected under the first and fourteenth amendments in the peaceful and orderly pursuit of his object to bring a certain point of view before the public in a lawful manner. The unpopularity of his views to the police officers cannot be grounds for sustaining a conviction of disorderly conduct. Particularly is this true when the record is completely devoid of any proof that defendant's attempts to persuade constituted a clear and present danger.

Lastly, it is suggested that where there is no evidence of a breach of the peace as required by the statute a conviction for disorderly conduct is a deprivation of due process. *Bouie* v. *City of Columbia,* 378 U. S. 347 (1964); *Thompson* v. *Louisville,* 362 U. S. 199 (1959).

On the basis of the above, it is suggested that the defendant's conduct not only constituted no breach of peace, but was rather an honest attempt to persuade others. At the time of his arrest, he was merely patiently expressing his view to Sergeant Burke. Such an attempt at persuasion and expression of one's views can only be regarded as a form of activity protected by the first and fourteenth amendments.

CONCLUSION

For the foregoing reasons, the conviction of the defendant should be reversed and the complaint dismissed.

Respectfully submitted,

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COURT OF APPEALS
State of New York

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

- against -

HERBERT CALLENDER,
Defendant-Appellant.

BRIEF AMICUS CURIAE OF THE NEW YORK CIVIL LIBERTIES UNION

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COURT OF APPEALS OF THE STATE OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,

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This brief is filed pursuant to leave of this Court permitting the New York Civil Liberties Union to appear as Amicus Curiae.

INTEREST OF THE AMICUS CURIAE

The New York Civil Liberties Union, an affiliate of the American Civil Liberties Union for the New York State area, is a non-partisan and non-profit organization devoted to protecting the individual rights and liberties guaranteed by the State and Federal Constitutions. The New York Civil Liberties Union is interested in this appeal solely because it raises important questions involving the rights of individuals under the First and Fourteenth Amendments to the United States Constitution.

THE CIVIL LIBERTIES ISSUE

The particular question before this Court is whether or not the State can punish under a broad and generalized disorderly conduct statute the peaceable and orderly expression of opinion.

ARGUMENT

Conviction Of Defendant Under A General Disorderly Conduct Statute Abridges His Right To Peaceful And Orderly Expression Of His Views As Protected By The First Amendment.

Defendant was arrested while in a public hallway in City Hall. At the time, defendant was attempting to elicit the cooperation of an officer to affect a citizen's arrest upon the Mayor for the alleged unlawful expenditure of public funds. The lawfulness of the attempted arrest, the validity of the underlying charges - these are not questions before this Court. Let there be no mistake as to the nature of the case presented: it is in fact a case of political protest. Mr. Callender, an active leader in the civil rights movement, had charged the Mayor with expenditures of public funds pursuant to contracts under which segregated work forces were hired. He chose to publicize the issue by a dramatic form of protest. Again, the propriety of that particular form of protest is not for the determination of this Court, if, for no other reason, than the citizen's arrest was never consummated and at the time that the defendant was arrested, he was doing no more than explaining his position and attempting to get assistance. That we have here an attempt at protest and no more is further borne out by the defendant's publicity release in advance of his action. By his own testimony, as well as that of the arresting officer, the defendant was peaceable and orderly at all times. No testimony was given which would indicate that normal functions at City Hall were in any way disrupted. In sum, we have a citizen in a public place acting in a peaceful and orderly manner, interfering with no substantial interest of the State, attempting to call to public attention the existence of racially discriminatory conditions. It is in fact a classic example of just that situation which the First Amendment is designed to reach. In succeeding sections we shall attempt to recite each of the salient features of the case and place them in their constitutional perspective.

I.

Defendant's Presence In The Corridor Of City Hall Was Entirely Lawful.

It is not open to dispute that the defendant was legally on the premises where he was arrested. There was no attempt to stop him at the entrance of City Hall nor is there anything in the charge which would indicate that his mere presence at the scene contributed to his arrest. We need not consider whether or not City Hall, as the seat of the government, could be wholly closed off to the public. That is not the case here. Even if City Hall is not freely accessible to pedestrian traffic, there is at least an implied consent to defendant's presence in the absence of any attempt to bar him from the premises.

Assuming therefore that his presence was lawful, disobedience of the officer's command to leave, by itself, cannot constitute disorderly conduct. Failure to obey an unlawful order cannot of itself be unlawful. See, e.g., Shuttlesworth v. Birmingham, 34 U.S.L.W. 4009 (11/16/66) That a person stands in a public place at the sufferance of a police officer is a proposition not worthy of discussion. To the extent that the disorderly conduct statute can be so applied, its constitutional vice is apparent. Therefore, in order for the policeman's order to have been a lawful one, there must have been factors other than Callender's mere presence which warranted it.

II.
Defendant's Protest Was At All Times Peaceable And Orderly

There is no testimony in the record which would support the inference that the defendant was anything but peaceable and orderly. His sole activity during the time that he was in the corridor of City Hall consisted of approaching two officers in an attempt to solicit their assistance in arresting the Mayor. In fact, at the very moment that he was arrested, he was engaged in a miled conversation with the arresting officer about the latter's obligation to provide assistance. No matter that the officer refused such assistance. That did not terminate his right to be where he was. His purpose was, as we have indicated, larger than effecting the arrest of the Mayor. He wanted to dramatize the underlying conditions which he was protesting. Reporters were there, publicity for his cause was being created. As long as he remained peaceable and orderly, Callender had an absolute right to be where he was. If an obstruction of the hallway resulted from the presence of a curious crowd - and in the absence of any complaints, such testimony must be regarded with some skepticism - certainly Mr. Callender cannot be charged with malfeasance. It is established beyond peradventure of a doubt that the peaceable and orderly expression of views may not be suppressed as a result of obstructions or disturbances caused by onlookers. See, e.g., Edwards v. South Carolina, 372 U.S. 229 (1963); Cox v. Louisiana, 379 U.S. 536 (1965).

III.
There Is No Evidence In The Record To Suggest That Any Of The Administrative Functions Carried On At City Hall Were Disrupted By The Defendant's Protests.

We would assume that the disorderly conduct statute would reach persons whose protest activity, although peaceful and orderly, disrupted legitimate and substantial activities of the State. This is essentially the classic test which has been applied in free expression cases since the original formulation of the clear and present danger test in Schenck v. United States, 249 U.S. 47 (1919). In other words, before any limitation on free expression in public places is to be permitted, there must be a showing of an overriding and substantial interest of the state. And that interest is not to be lightly inferred. Rather it must be pursuant to narrowly drawn and specific statutes making clear the intention of the state which justifies the limitation on free expression.

The test to be applied was described in Cantwell v. Connecticut, 310 U.S. 296, 311 (1939):

> . . . in the absence of a statute narrowly drawn to define and punish specific ordinances as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question.

In weighing the interest of the state in preserving peace and good order within its borders against the constitutionally expressed interest in open and free communication, the Court noted the failure of the state to pass a specific statute to deal with the conduct sought to be punished.

> Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from that we must here answer. Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limits. Here, however, the judgment is based on a common law concept of the most general and undefined nature....
>
> . . . When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power

> of the state to protect or punish is obvious. Equally obvious is it that a state may not unduly suppress free communications of views, religious or other, under the guise of conserving desirable conditions. Id., at 307-08.

If there is a state interest in limiting demonstrations, including those which are peaceful and orderly, in City Hall, it must be clearly and expressly stated by statute. That interest may not be presumed from a broadly worded, generalized statute such as the disorderly conduct statute.

When confronted with breach of the peace convictions arising out of demonstrations on the grounds of the South Carolina State Capitol, the Supreme Court considered the state's contention that demonstrations near the Capitol would disrupt government functions. In refusing to infer a broader restriction on free expression in that location than elsewhere, the Court noted:

> We do not review in this case criminal convictions resulting from the even-handed application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conditions be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case. Edwards v. South Carolina, 372 U.S. 229, 236-37 (1963).

Applying the same principle to sit-in cases, Justice Harlan, in a concurring opinion, stated:

> . . . when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. . . .
>
> . . . sound constitutional principles demand of the state legislautre that it focus on the nature of the otherwise "protected" conduct it is prohibiting, and that it then make a legislative judgment as to whether that conduct presents so clear and present a danger to the welfare of the community that it may legitimately be criminally proscribed. Garner v. Louisiana, 368 U.S. 157, 202-03 (1961).

In the absence of such a precise expression of intent, we are thrown back on the test which has been applied in previous free expression cases. For the purposes of the disorderly conduct statute, City Hall is like all other places. A limitation on free expression must be justified by some showing of interference with a substantial interest of the State. There is no such showing in this record. There is absolutely no evidence to suggest that any of the functions carried on in City Hall were in any manner disrupted.

The fact pattern here is strongly reminiscent of that which pertained in Henry v. Rock Hill, 376 U.S. 77 (1964), in which demonstrators assembled in a "peaceful, orderly fashion in front of City Hall to protest segregation." They were arrested when they failed to disperse, and were charged under a generalized breach of the peace statute. That case is ours but for the fact that Callender was inside and not outside. But that is a difference without a meaning unless it can be shown that conducting the protest inside caused greater disruption than the outdoors protest in Henry. But to repeat, there is no evidence that such a disruption occurred.

The approach here advocated is essentially that which was taken by the Supreme Court in Brown v. Louisiana, 34 U.S.L.W. 4143 (1965). There the defendants, five young Negro males, entered a segregated library to protest the fact that the library system in that area was segregated. They asked for a book and, upon being advised that it would have to be requisitioned from another branch of the library, filled out the appropriate loan card. At that point, their official business with the librarian was concluded. Nevertheless, despite requests by the librarian that they leave, they remained sitting in the library in further protest against the segregation. There was no claim by the defendants that their continued presence was for any reason other than the protest.

> We need notassume that petitioner Brown and his friends were in search of a book for night reading. We instead rest upon the manifest fact that they intended to and did stage a peaceful and orderly protest demonstration . . . . Id. at 4145.

From there the Court's analysis was simple: it begins with the proposition stated in the first section above, namely, that "petitoners' presence in the library was unquestionably lawful. It was a public facility open to the public. Negroes could not be denied access since white persons were welcome." Ibid.

The Court then notes that the demonstration was peaceful and orderly. "There was no distraction of others, no disruption of library activities and no violation of any library regulations." Id. at 4146.

In essence, the Court recognized that

> We are here dealing with an aspect of a basic constitutional right--the right under the First and Fourteenth Amendments guaranteeing freedom of speech and of assembly, and freedom to petition the Government for a redress of grievances. . . . As this Court has repeatedly stated, these rights are not confined to verbal expression. They embrace appropriate types of action which

> certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be, the unconstitutional segregation of public facilities. Ibid. [Emphasis added]

The principle again emerges that, in the absence of a violation of a specific and narrowly drawn statute, establishing some particularized interest of the state, the Court will not tolerate any infringement of the right of peaceable and orderly expression of opinion under a generalized breach of the peace statute. As the Court conceded, we might have had a different case had their been disruption. But there, as here, none was proven.

The logic of Brown is of particular applicability to the instant case because the State here attempts to not merely enjoin a form of protest but attempts to do so at the very location in which protest is most appropriately expressed. City Hall is the seat of the city government. It is the author of those policies which were the subject of Mr. Callender's protests. Much as the State Capitol was the logical place to picket in protest of State-supported segregation, which picketing the Supreme Court described as "an expression of basic constitutional rights in their most pristine and classic form," Edwards v. South Carolina, 372 U.S. 229, 235 (1963), so City Hall was the logical focus of this protest. That this is an intolerable condition in a democratic society was stated in this particularly appropriate language from Stromberg v. California, 263 U.S. 359, 369 (1931):

> The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our Constitutional system. A statute which upon its face, and as authoritively construed, is so vague, and indefinite as to permit the punishment of the fair use of the opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment.

It might be that the State will argue that no such sweeping interdiction is contemplated, that, in fact, picketing of City Hall continues on almost a daily basis. It is sufficient answer that the disorderly conduct statute makes no distinction between that apparently acceptable form of protest and that in which Mr. Callender engaged. Its application to the latter leaves no doubt as to its applicability to the former. Both applications, we submit, are unconstitutional.

CONCLUSION

The teaching of the Supreme Court cases is manifest: peaceable and orderly demonstrations are absolutely protected by the First Amendment and Fourteenth Amendment in the absence of a violation of some specifically defined and substantial interest of the State. That principle applies as much in City Hall as it does in a public library, and as much inside those institutions as outside. Callender was peaceable and orderly; he obstructed no one; he did not interfere with any of the normal functions carried on in City Hall. His protest, therefore, constituted an exercise of free speech which may not be punished. The judgment of conviction below should be reversed.

Respectfully submitted,

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : FIRST DEPARTMENT

- X

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

FRANCES CRAYTON, ELAINE BIBULD, :
JOYCE SCHURIK, PAUL HEINEGG, KENNETH
RICE, HOWARD QUANDER and HERBERT :
CALLENDAR,
:
Defendants-Appellants.
:
- X

APPELLANTS' REPLY BRIEF

STATEMENT

The facts are seriously in dispute. The Court is respectfully referred to Appellants' Brief. Respondent's statement of the facts gives the erroneous impression that defendants deliberately entered an unauthorized area and staged a sit-in.

POINT I.

THE EVIDENCE WAS INSUFFICIENT, AS A MATTER OF LAW, TO ESTABLISH DEFENDANTS' GUILT PURSUANT TO P.L. 722.

The real issue on this appeal is whether the usual rules of evidence apply to a disorderly conduct prosecution.

The importance of that issue is amply illustrated by this case because each defendant was convicted of the misdemeanor of resisting arrest, flowing from the disorderly conduct convictions.

Respondent's Brief, concise though it is, confuses the central issue as to whether the usual rules of evidence are applicable in a disorderly conduct case. Defendants, for the sake of argument, concede that the preamble of 722 P.L. is solely within the discretion of the trial judge and that a threatened breach of the peace may be found under almost any circumstances.

Appellants, however, rigorously deny that the same broad discretion exists as to subdivisions (2) and (3) of P.L. 722. As to those, there must be evidence, and that is precisely what was lacking in the case below.

The presence or absence of evidence of "interference or obstruction" is not determined only by means of a complaint by a member of the public, although this is the best evidence of "interference." In the cases of Peo. v. Gootzeit and Peo. v. Thorpe, cited in the People's Brief, members of the public were complainants and this constituted first rate evidence as to violations of P.L. 722 Subd. 2. In other cases here relied upon by the People, the evidence of "interference and obstruction" as to members of the public was described by police testimony. Thus, in People

v. Callendar, 18 N.Y.2d 621 (1966), Advance Sheets, the Record on Appeal reveals ample testimony as to business being conducted by the Mayor and others at City Hall and the officer's belief that the continued presence of defendant, who was trying to arrest the Mayor, was interfering with that business. See Cases and Points, New York Court of Appeals, 1966, Volume 59, Case 661. While affirming without opinion, the Court of Appeals' statement of the facts in Peo. v. Callendar, supra, refers to defendant's "interfering with the normal conduct of city business and with persons having official business with the Mayor."

People v. Penn (see People's Brief) also contains ample evidence of defendants sitting in front of trucks and interfering with and obstructing truck drivers as testified to by police.

People v. Galpern (see People's Brief) is a subdivision 3 case. Subdivision 3 contains no requirement that a member of the public be interfered with or obstructed, but has some strict rules of its own which will be discussed subsequently.

In the instant case, the Court below relied heavily upon a Magistrate's decision also cited in the People's Brief, People v. Yergen, 164 Misc. 83 (City Mag. N.Y. 1937). When all the confusion is stripped away from this appeal, it is still People v. Yergen that is being argued, because the ancient cases cited therein are very forthright in stating that "the usual rules of evidence do not apply in disorderly conduct" and that a Magistrate has absolute discretion to decide who is "disorderly" and who is not.

It is only by abandoning the usual rules of evidence that these defendants may be found to have violated subdivision (2) because there was no testimony indicating that any business was being conducted at the time (Good Friday) and much evidence to the effect that no business was being conducted in the absence of the Mayor. Nor was there a scintilla of evidence that any member of the public could have been interfered with or obstructed by reason of defendants' conduct. If news reporters blocked a gate, they should have been asked to clear it. The testimony is entirely consistent with a finding that the only persons present were news media personnel, police officers and defendants.

Subdivision 3 is inapplicable because defendants were inside a building rather than on a street when asked to move on. In the case of People v. Hendrix, et al., Part 2A Manhattan, Docket Nos. 14612-14616, the Honorable Judge Simon Silver wrote in an unreported opinion (12/4/64):

> Thereafter they remained in the public corridors of the City Hall until about five minutes to five when Lt. McMann again read them the statement containing three paragraphs informing them that if

> they remained after five o'clock they would be interfering with the proper conduct of the City's official business, that they had a right to picket outside, but that they would have to leave the building and they refused. Each time they were asked Will you leave?, and each time their answer was No. They were then informed that if they did not leave they would be arrested. They again refused and they were arrested.
>
> "The facts herein do not establish the guilt of any of the defendants beyond a reasonable doubt of the charge of Disorderly Conduct and each of the defendants is accordingly acquitted of that charge."

People v. Hipple, 263 N.Y. 242, 243-4 (1942), stands for the construction that the defendants must congregate "on a public street" to sustain a conviction pursuant to subdivision 3. People v. Cancel and Collazo, 3 N.Y.2d 327 (1957), states:

> "The term 'congregates with others' as used in the statute, requires at the very least three persons.... It would be an unjustifiably liberal interpretation of subdivision 3 and at variance with the strict construction called for in these cases to hold that the defendants here, only two in number ... were 'congregating with others.'"

The allegation in the People's Brief that People v. Penn, 16 N.Y.2d 581 (1965), establishes that failure to move in response to a policeman's command "encompasses all pedestrian and vehicular thoroughfares, including public corridors in municipal buildings" is ridiculous. The Court of Appeals in that case affirmed without opinion. In listing the arguments of appellants' counsel the Court of Appeals did not mention the argument that some defendants were arrested in a private driveway rather than a public street. The Court of Appeals overlooked that point because everyone else below, including the appellants (see appellants brief), also overlooked it. See Cases and Points, New York Court of Appeals, 1965, Volume 70, Case 630, People v. Penn. Messrs. Vuiller and Leibowitz in their brief, pp. 12 and 13, simply stated:

> "The demonstrators not only effectively obstructed and interfered with others (the truck drivers), but congregated on a public street and refused to move on when ordered to do so by police." (Emphasis supplied.)

The Appellate Term in that case held:

> "They also violated Subd. 3 of the statute by congregating on a public street and refusing to move on when ordered to do so by the police."

See Cases and Points, supra, Appendix 4.

There is no other reference to subdivision 3 in the entire decision, yet the People would have this Court, in the instant case, overturn an important rule of construction laid down by the Court of Appeals in 1957.

POINT II.

SECTION 1851 OF THE PENAL LAW HAS NO APPLICATION TO THIS CASE.

Respondent's Brief disposes of Section 1851 as applied to this case by means of a single line and two criminal court decisions that are grossly in error. In reality the appeal on this issue raises serious matters of first impression, never before considered by a New York appellate court. These matters are dealt with at length in Appellants' Brief herein.

Respectfully submitted,

JOHN E. SILVERBERG
Attorney for Appellants
Office and P.O. Address
15 Park Row
New York, N.Y. 10038

REPLY BRIEF   PEOPLE OF NY V. HERBERT CALLENDAR

In its Motion to Dismiss or Affirm,[1](at page 7 et seq.), ~~thexxxxxxxxxxxxxxx~~ Appellee, contends that unlike the "generalized" breach of the peace statutes condemned by this Court in Edwards v. South Carolina, 372 U.S. 229, 237 (1963) and Cox v. Louisiana, 379 U.S. 536 (1965), Section 722 of the Penal Law of New York ~~andxsubdivisionsx2xandx3~~ ~~inxparticularxare~~ is narrowly limited to define and punish specific conduct. ~~Indeed~~, But, such a position misses the burden of our argument; for an act to be punishable under any of the subdivisions of Section 722 ~~it must~~ ~~there~~ it must first be proved that the act (provoked or) tended to provoke a "breach of the peace", a phrase frequently defined by this Court. Cf. Cantwell v. Connecticut, 310 U.S. 296.(1940). ~~Yet~~ ~~Even~~ But even Appellee's summary of the evidence fails to establish any circumstances indicative of a breach of the peace. Even more than in Cox, supra, the police were in complete control of the situation at all times. Nothing said or done by Appellant or his one bona fide companion[2] in any way threatened a breach of the peace. All that was proven was that Callender sought the assistance of the police and it was denied him. ~~All that~~ Appellant ~~did was to stand~~ stood in a corridor and ~~speak~~ spoke to two police officers to solicit their aid (~~Appellee's~~ Motion p.4; Record p.19). This was the full extent of his "conduct". Other people, including news media personnel and others neutral to~~p~~ Calendar's efforts, were present before Callender arrived and were not asked to move. Appellant differed from them only in that he ~~was a verbal advocate~~ spoke and the police did not like what he said whose ~~peaceful petition met with disfavor~~. Appellee's gratuitous, and improper, reference to a physical attack (Motion p.9) is totally without foundation. Appellant was engaged in "pure" speech fully protected by the First Amendment, seeking to redress what he conceived of as a grievous wrong committed. Even if h~~is~~ remaining to continue to ~~xxxx~~ solicit assistance is "conduct", it was nonetheless protected activity. He had a right to be where he was, the building was open, he behaved in a seemly manner. The police had no right to arrest him for failing to leave on command. He was [illegible] willfully in trespass.

---

[1] Hereinafter referred to as "Motion".

[2] As was known to Appellee, one of Appellant's two companions was a police officer acting in an undercover capacity.

In light of the facts in this case, the contention that the statute as interpreted by the Courts below is a narrowly drawn exercise of police power becomes untenable. Indeed, subdivision 2 which punishes persons who act "...in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others..." encompasses a broad variety of constitutionally protected conduct. Language, such as that ~~of~~ uttered by the Appellant, which merely "annoys" others has consistently been protected by this Court, as have words which "invite dispute", Cox v. Louisiana, supra; Edwards v. South Carolina, supra; Terminiello v. Chicago, 337 U.S. 1 (1949); Cantwell v. Connecticut, supra.

Similarly, subdivision 3, as interpreted below, which punishes one who congregates with others on a public street and refuses to move on when ordered by the police

> "...does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat". Cox v. Louisiana, supra at 559; Shuttlesworth v. City of Birmingham, 382 U.S. 87 (1965)

~~By the authoritative interpretation of the Court of Appeals of the State of New York in People v. Galpern, 259 N.Y. 279 (1932), the order of a police officer is presumptively reasonable. Thus subdivision 3, in light of Galpern, necessarily conflicts with the Due Process Clause of the Fourteenth Amendment.~~ ~~Certainly~~ absent the showing of a "clear and present danger", absent any conduct which invites a breach of the peace, as in Feiner v. New York, 340 U.S. 315 (1951), subdivision 3, as interpreted by the courts of New York, can not be constitutionally applied.

Finally, the substantiality of this appeal is emphasized by the common ~~legal~~ issues which it shares with Turner et. al. v. New York (No. 399, argued ~~April 12, 1967~~). ~~Furthermore~~ In our view, the instant case affords the Court an opportunity to determine these significant issues in a different factual setting.

Respectfully submitted,
etc.

CLASS OF SERVICE
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W. P. MARSHALL
CHAIRMAN OF THE BOARD
TELEGRAM
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PRESIDENT

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SEDFRE

CITY OF BATON ROUGE VS. POLACHECK, JOHN W., 1965

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Filed 9/7/65

CITY OF BATON ROUGE) NUMBER 14,684 DIV. A
) CITY COURT
VS.) CITY OF BATON ROUGE
JOHN W. POLACHECK) EAST BATON ROUGE PARISH
) STATE OF LOUISIANA

))

APPLICATION FOR BILL OF PARTICULARS

NOW COMES DEFENDANT THROUGH UNDERSIGNED COUNSEL and informes the Court that he is unable to plead or properly prepare his defense unless a Bill of Particulars to the affidavit filed herein is answered by the City of Baton Rouge as follows:

(1) What acts by the accused constituted vagrancy within the meaning of the City Code Section 13:250?

(2) In what way is the accused a person who frequents the streets habitually as late or unusual hours?

(3) Does the City contend that the accused was without visible means of support?

(4) Does the City contend that the accused was without gainful employment?

(5) Was a search made of the person of the accused?

(6) Was a search made of the car in which the accused was driving?

(7) If there was a search made of the car in which the accused was driving, was said search made before or after arrest?

(8) What acts of the accused constituted suspicious behavior causing the arresting officer to stop and question the accused?

WHEREFORE, defendant JOHN W. POLACHECK prays that the City prosecutor be ordered to show cause on a day and time certain why the Application for Bill of Particulars should not be answered fully and in writing or alternatively why the charging affidavit should not be quashed for failure to do so.

For all equitable relief.

Of Counsel:

Carl Rachlin, Esq.
38 Park Row
New York, New York

By Attorney:

Murphy W. Belll
971 South 13th Street
Baton Rouge, Louisiana

AFFIDAVIT

Murphy W. Bell, upon his oath deposes that the above Application in all its particular are true and correct.

Murphy W. Bell

Sworn to and subscribed before me this___________day of September, 1965.

ORDER

Considering the foregoing it is ordered that the City of Baton Rouge through the City Attorney show cause on the________ day of________________, 1965 why the Application for Bill of Particulars should not befully answered or alternatively why the prosecuting affidavit should not be quashed.

Baton Rouge, Louisiana, September _____________, 1965.

CITY JUDGE

CERTIFICATE

I certify that a copy of the foregoing pleading has this day been served on the City Attorney of Baton Rouge, La. by U.S. Mail postage prepaid.

September 7th, 1965.

Murphy W. Bell

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SEDFRE

BIGELOW VS PRIDGEON / M^{c} CALL etal VS. CHERRY et.al.
(VOTER REGISTRATION)

MADISON COUNTY, FLORIDA

1965

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State Historical Society of Wisconsin

Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

JESSE MCCALL,
JOHNNY BROWN,
and
ARTHUR EDWARDS

Plaintiffs

vs.

CIVIL ACTION

NO.__________

HERMAN CHERRY, individually and as
Chief of Police of the City
of Madison, Florida
and
WILLIAM POWELL, individually and as
a police officer of the City
of Madison, Florida
and
RANDALL H. ROWE, JR., individually and
as Judge of the Municipal or
City Court of Madison, Florida
and
GORDON WILLIAMS, Mayor of the City of
Madison, Florida
and
SIMMY MOORE, Sheriff of Madison County,
Florida

NOTICE OF HEARING ON APPLICATION FOR TEMPORARY INJUNCTION

TO: Each of the above-named defendants:

You and each of you are hereby notified that a hearing will be held before the Honorable Bryan Simpson in his court room in the U. S. Courthouse in Jacksonville, Florida, at 10:00 A.M. on August 17, 1965; said hearing shall be upon plaintiffs' prayer for a temporary injunction, as set forth in ~~his~~ their complaint.

You are invited to attend at the said time and place, and show cause why an injunction should not issue as prayed for; and if you fail to appear, said hearing will be held in your absence.

Dated: August 6, 1965.

David J. Halperin

one of the attorneys for plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM BIGELOW, Plaintiff

vs.

SIDNEY PRIDGEON,
HERMAN CHERRY, individually and as Chief of Police of the City of Madison, Florida,
WILLIAM POWELL, individually and as a police officer of the City of Madison, Florida,
GORDON WILLIAMS, as Mayor of the City of Madison, Florida, and
RICHARD H. ROWE, individually and as Judge of the City or Municipal Court of Madison, Florida,
Defendants

CIVIL ACTION NO.____________

NOTICE OF HEARING ON APPLICATION FOR TEMPORARY INJUNCTION

TO: Each of the above-named defendants:

You and each of you are hereby notified that a hearing will be held before the Honorable Bryan Simpson in his court room in the U. S. Courthouse in Jacksonville, Florida, at 10:00 A.M. on August 17, 1965; said hearing shall be upon plaintiff's prayer for a temporary injunction, as set forth in his complaint.

You are invited to attend at the said time and place, and show cause why an injunction should not issue as prayed for; and if you fail to appear, said hearing will be held in your absence.

Dated: August 6, 1965.

David J. Halperin,
one of the attorneys for plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

JESSE McCALL, JOHNNY
BROWN, and ARTHUR
EDWARDS,

individually and as
representatives of a class,

Plaintiffs,

vs.

HERMAN CHERRY, individually and
as Chief of Police of the City of
Madison, Florida, and
WILLIAM POWELL, individually and as a police
officer of the City of Madison, Florida,
and
RANDALL H. ROWE, JR., individually and
as Judge of the Municipal or City Court
of Madison, Florida, and
GORDON WILLIAMS, Mayor of the City
of Madison, Florida, and
SIMMY MOORE, Sheriff of
Madison County, Florida,

Defendants,

CIVIL ACTION NO. ____

COMPLAINT

The plaintiffs complain of the defendants, and for cause of action allege that:

1. Jurisdiction of this Court is founded upon 28 U. S.C. Sec. 1343 (3) and (4) in that this is an action to redress the deprivation under color of state regulation, usage and custom of the rights, privileges and immunities secured by the Constitution and by acts of Congress, including the Civil Rights Act of 1964, 78 Stat. 245, which provide for equal rights of citizens. This is an action for equitable relief and damages under Acts of Congress providing for the protection of civil rights, including the aforementioned Civil Rights Act of 1964 and including 42 U.S.C. Sec. 1983.

2. Defendants are joined herein in a single action because they are the responsible law enforcement officials of the City of Madison and the County of Madison, State of Florida and because the rights to relief asserted against them arise of out the same series of transactions, and there are material questions of law and fact in common as to all of the defendants.

3. Plaintiffs are Negro citizens of the City and County of Madison, State of Florida. They bring this action on their own behalf and as a class action on behalf of all other persons similarly situated, including all Negro citizens of Madison County, State of Florida and all civil rights workers working in said county. Since June, 1965, the plaintiffs, McCall and Brown have actively participated in civil rights work in Madison County, including voter education and registration, and non violent protest demonstrations against acts of segregation and discrimination on account of race or color and against actions by Madison City and Madison County authorities designed to prevent or hinder Negro citizens of the United States from registering to vote.

4. The State of Florida and its political subdivisions maintained, until very recent times, segregation of the races as an official State policy. Recently, and down to the present time, the officials of Florida and its subdivisions, and in particular the police authorities, mayors, sheriffs, judges, and other officials of the State of Florida in the County of Madison and City of Madison, have pursued a deliberate policy, practice, custom, usage and plan, under color of their respective State, county, and city offices, of resisting efforts of Negro citizens of the United States to exercise all those rights, privileges and immunities guaranted to them by the Constitution, laws and statutes of the United States of America. In pursuance of this policy, the said officials of the City and County of Madison, Florida, have, among other things, done the following acts:

(a) harrassed Negro and white civil rights workers, and Negro citizens generally, by causing their arrest and prosecution for non-existent offenses, or for minor offenses which, if committed by a white person unconnected with the civil irghts movement, would not have been the subject of arrest or prosecution;

(b) failed and refused to give adequate police protection to civil rights workers when they soughts to exercise their rights of freedom of speech and freedom of assambly;

(c) permitted, condoned, and participated in beatings of Negros and white civil rights workers designed to intimidate Negros in the exercise of their civil rights; and

(d) have committed many other similar acts antagonistic to the exercise of full and equal civil rights by all citizens, and in particular by Negro citizens of the United States and of the State of Florida.

5. On July 27, 1965 Plaintiff McCall and one Andrew White were engaged in transporting Negro citizens to a place for voter registration. One Sidney Pridgeon, a notorious segregationist, who had previously engaged in the intimidation and beating of civil rights workers involved in voter registration, drove his automobile is such a fashion as to force McCall's automobile off the road. After driving in such a fashion, Pridgeon appeared before Defendant Rowe and swore out a warrant for McCall's arrest on the grounds of reckless driving contrary to the laws of the State of Florida. Without investigation and as part of the conspiracy to deprive Negro citizens of their Constitutional rights, defendant Rowe ordered the arrest of McCall and defendant Cherry, or some officer under his direction and control arrested McCall ---all as part of a conspiracy to intimidate Negros of their constitutional rights under color of law.

6. From the time that civil rights workers arrived in Madison, they were kept under surveillance and threatened by the police officers of the City of Madison and the Sheriff's Office of Madison County. Persons who housed them were arrested on false charges which were later dropped. The Police Department of the City of Madison and the Sheriff's Office of Madison County refused requests for protection---even after the civil rights workers were chased, threatened and beaten by local hooligans. Local Negro citizens who participated in civil rights work were arrested on groundless charges. For example, on July 28, 1965, plaintiff, Brown, was ordered arrested by defendant, Rowe, on a charge of disturbing the peace and disorderly conduct. Defendants Cherry and Powell thereupon caused Brown's wrongful arrest. On August 2, 1965 at a trial on those charges, defendants Cherry and Rowe conspired to violate Brown's civil rights by denying his request to be given an opportunity to call witnesses and appear by counsel at a so-called trial on said charges. Instead defendant Rowe conducted a summary trial and sentenced Brown to a $50.00 fine or ten days in jail. In a habeas corpus proceeding held on August 4, 1965, the Circuit Court held that the information filed by defendant, Rowe, did not state a crime under the laws of Florida and the Ordinances of Madison and ordered Brown discharged from the custody of defendant, Cherry.

Prior thereto when one William Bigelow, questioned defendant about the irregularities in the procedural aspects of the Brown trial, Cherry forced Bigelow to see defendant Rowe; and in the presence of Rowe and Cherry, defendant Powell maliciously beat Bigelow about the face.

7. Not only did the Madison Cpunty Sheriff's Office and Madison City Police Department fail to provide plaintiffs and other members of the class with protection, but they condoned use of beatings as a means of intimidating Negros by members of those departments. Threats were made by police and sheriff's on the lives of Negros and civil rights workers. Plaintiff Edwards was arrested by defendant Powell on a variety of charges, and thereafter was mercilessly beaten by defendant, Powell; so that he required extensive medical attention. After permitting one visit to a medical doctor, the defendant Moore

and his agents, acting as Edwards' jailers refused to permit him further medical attention. On July 26, 1965 defendant, Rowe, held a trial of Edwards at which trial Edwards was not advised of his right to counsel. Rowe sentenced Edwards to a fine of $275. 00 or Thirty days in jail. Edwards started serving said jail term but when the Brown habeas corpus proceeding was filed, Edwards, who had been Brown's cellmate,was told that he was released from jail.

8. The plaintiffs who bring this suit on their own behlf and on behalf of others similarly situated seek a common relief. The members of said class are so numerous as to make it impractical to bring them all before this Court. The interests of said class are adequately represented by the plaintiffs, all of whom are members of it.

Wherefore, plaintiffs pray that this Court enter judgment as follows:

a. That the defendants their agents, servants, and employees, their successors in office, and all personsacting under their direction or in concert with them, be temporarily and permanentlly enjoined and restrained from assaulting or harrassing Negro citizens, or white persons engaged in civil rights activities, for the purpose of coercing, threatening, or otherwise interfering with their free and full exercise of any of the rights guarantteed to them by the Constitution, laws and statutes of the United States, including, but not limited to, their right to speak freely, to be represented by counsel and to call witnesses on their behlaf when charged with crimes, to peaceably assemble, and to register to vote and to vote; and further, that they be ordered to give full and adequate protection to Negro persons and to white persons engaged in civil rights activities, so as to reasonably protect all such persons from assault, battery, threats and harassment by private citizens and law enforcement officers seeking to interfere with the exercise of the said rights.

b. That plaintiff McCall have and recover from the defendants the sum of $25,000.00 for the wrongs alleged herein

c. That the plaintiff, Brown, have and recover of the defendants the sum of $75,000.00 for the wrongs alleged herein

d. That the plaintiff, Edwards, have and recover of the defendants the sum of $75,000.00 for the wrongs alleged herein

e, And for such other and further relief as this Court may deem just and equitable.

State of Florida)
SS:
County of Leon)

The undersigned, being first duly sworn, deposes and says that he has read the above Complaint, and that the facts set forth therein are true, to the best of his information and belief.

William L. Bigelow

Subscribed and sworn to before me this 7th day of August, 1965.

Seal

Susan Clare Zimmerman
Notary Public

My commission expires:
February 16, 1969

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(Phone: 222-2173)

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

WILLIAM BIGELOW, Plaintiff, vs. SIDNEY PRIDGEON, HERMAN CHERRY, individually and as Chief of Police of the City of Madison, Florida, WILLIAM POWELL, individually and as a police officer of the City of Madison, Florida, GORDON WILLIAMS, as Mayor of the City of Madison, Florida, and RICHARD H. ROWE, individually and as Judge of the Municipal or City Court of Madison, Florida, Defendants	CIVIL ACTION NO.__________ COMPLAINT

The plaintiff complains of the defendants, and for cause of action alleges that:

COUNT I

1. (a) Jurisdiction of this Court is based upon diversity of citizenship and amount, in that:

(1) The plaintiff is a citizen and resident of the State of California; and the defendants are all citizens and residents of Madison County, State of Florida; and

(2) The amount in controversy exceeds the sum of $10,000, exclusive of interest and costs.

(b) Jurisdiction of this Court is further founded upon 28 U.S.C. § 1343(3) and (4), in that this is an action to redress the deprivation, under color of State regulation,, or State custom or usage, of rights, privileges and immunities secured by the Constitution of the United States, and particularly Amendments 14 and 15 thereto, and by Acts of Congress, including the Civil Rights Act of 1964, 78 Stat. 245, which provide for the equal rights of citizens; and it is an action for damages and equitable relief under Acts of Congress providing for the protection of including 42 U.S.C. § 1983.

2. The several defendants herein are joined in a single action because rights to relief are asserted against them arising out of the same series of transactions, and there are material questions of law and fact in common as to all of the defendants.

3. The plaintiff, William Bigelow, is a person of the white or Caucasian race, who is spending the summer of 1965 working for the purpose of furthering civil rights, in conjunction with and under the auspices of the organization commonly known as S.C.O.P.E. He arrived in Madison County, Florida, on or about 6/21/65, and has continually thereafter, and down to the time of the filing of this complaint, been active in the civil rights activities of Negro citizens of the United States residing in and about Madison County, Florida. His primary activity during the said period of time has been encouraging and assisting the said Negro citizens of the United States and of the State of Florida to register to vote, and in connection with such activities he has engaged in various organizational activities toward that purpose. He has transported prospective voters to the place of registration by automobile. And he has helped organize and has participated in lawful, non-violent protest demonstrations against acts of segregation and discrimination on the ground of race or color in and about Madison County, Florida, including, but not limited to, actions by County authorities to prevent or hinder Negro citizens of the United States from registering to vote.

4. The State of Florida and its political subdivisions maintained, until very recent times, segregation of the races as an official State policy. In more recent times, and down to the present time, the officials of the State of Florida and its political subdivisions, and in particular the police authorities, judges, mayors, and other officials of the State of Florida in the County of Madison and City of Madison, Florida, have pursued a deliberate policy, practice, custom, usage and plan, under color of their respective state offices, of resisting efforts by Negro citizens of the United

States to exercise all those rights, privileges and immunities guaranteed to them by the Constitution, laws and statutes of the United States of America. In pursuance of this policy, the said officials of the City and County of Madison, Florida, have, among other things, done the following acts:

~~(a) caused the voters' registration office of the said County to remain closed except on limited days during the month, and except during limited hours on such days, all with the deliberate purpose of making it difficult for Negro citizens to register and vote;~~

(a) harrassed Negro and white civil rights workers, and Negro citizens generally, by causing their arrest and prosecution for non-existent offenses, or for minor offenses which, if committed by a white person unconnected with the civil rights movement, would not have been the subject of arrest or prosecution;

(b) failed and refused to give adequate police protection to civil rights workers when they sought to exercise their rights of freedom of speech and freedom of assembly;

(c) and have committed many other similar acts antagonistic to the exercise of full and equal civil rights by all citizens, and in particular by Negro citizens of the United States and of the State of Florida.

5. The participation of plaintiff in civil rights activities, as previously described, were well known to public officials of the City and County of Madison, Florida; and in particular, were well known, at all times material to this action, to the defendants, Cherry, Powell, Rowe, and WILLIAMS.

6. Many persons in the white populace of the City and County of Madison, Florida are antagonistic to the efforts of Negro citizens of the United States to exercise all of the rights, privileges, and immunities guaranteed to them by the Constitution, laws and statutes of the United States; and in particular, are antagonistic to their efforts to register to vote, and their efforts to have equal and unsegregated public schools, and their efforts to utilize, on a full and equal basis, public facilities

7. The participation of plaintiff in civil rights activities, as previously described, were well known to the aforementioned members of the white populace of Madison, Florida; and in particular, were well known to the defendant, Pridgeon.

8. Some of the white persons mentioned in the preceeding paragraph, and in particular the defendant, Sydney Prigeon, have expressed the said antagonisms by harrassing, insulting, and interfering with civil rights workers both during the time of lawful and peaceful demonstrations and at other times, and by making or attempting to make physical assaults upon the said civil rights workers and on Negro citizens generally. The law enforcement officials of the State of Florida in the city and county of Madison, Florida, have failed and refused to take such action as would reasonably be appropriate to prevent such harrassment and assault; and the said public officials, including the defendant Cherry and the defendant Rowe, as Municipal or City Judge of the City of Madison, Florida, have failed and refused to prosecute white persons who engage in such harrassment, attempted assaults, and assaults; or, if any action be taken, the said white persons have been discharged with no penalty or with nominal penalty only. The said actions by the public officials of the City and County of Madison, Florida, and in particular of the city of Madison, Florida, constitutes a deliberate plan and course of action, under color of their respective state offices, to discourage civil rights activities and to discourage the full and free exercise of their rights by Negro citizens of Madison County, Florida, and to encourage white persons to continue to commit susch acts of harrassment, attempted assault, and assault.

9. On or about July 3, 1965, at about 7 p.m., the plaintiff was driving an automobile in the City of Madison, Florida, and, at the corner of Rutledge and Shelby Streets in the said city, stopped his automobile due to traffic conditions. At the said time and place, the defendant, Sydney Pridgeon, in the company and

with the assistance of approximately three other withe male adults, ran to the plaintiff's stopped automobile, violently opened the doors to the same, violently and with great force physically assaulted the plaintiff by striking him while he was in the said automobile, proceeded to drag him out of the said automobile onto the street, and then proceeded to strike, beat, and kick the plaintiff at and about every exposed portion of his body. The said assault and beating by the defendant, Pridgeon, and the other white males who assisted him (and whose identities are to your plaintiff unknown) proceeded for several minutes. All of the said violent acts committed by the defendant Pridgeon, and the persons acting with him were wholly unprivileged and unprovoked.

10. As direct and proximate results of the aforesaid assault by the defendant Pridgeon and the persons acting with him, the plaintiff suffered numerous bruises, abrasions, and contusions on and about his arms, face, legs, back, chest, and nose. His kidneys were damaged and injured. His left wrist in particular was severly injured. He suffered a brain concussion or possible fracture of the skull; numerous bruises on or about his face; a bruised nose, changing his physical appearance; and an apparant fracture or disruption of the cartilege in his nose, causing great difficulty in breathing. His left jaw was injured. He was rendered sick, sore and lame all over, and suffered great and extreme pain and suffering, any movement of his body causing sharp serious pain. The injuries complained of, including in particular but not limited to, the damage to his skull or brain, the damage to his kidneys, and the damage to his nose and physical appearance, are permanent, and will continue to cause him difficulty for the balance of his life, and he will continue to suffer pain as a result of all the aforesaid injuries for the remainder of his life. In addition, his clothing was totally ruined, and he suffered great mental anxiety and distress as a result of the aforesaid acts and injuries. He was hospitalized for treatment of his injuries and was totally disabled and rendered unable to work for a period in excess of three days, thereby

causing a loss of potential income; and his future earning capacity was permanently impaired. He was attended by doctors and nurses, received treatment, including various medications, and was subjected to x-ray and laboratory tests, thereby incurring great expense for all of the said hospitalization, treatment and tests and examinations.

11. The physical assault committed upon the person of the plaintiff by the defendant, Sydney Pridgeon, and the persons acting in concert with him, were committed maliciously, with willful intention of causing the plaintiff great physical harm.

12. The said physical assault by the defendant Pridgeon and those acting in concert with him were committed with the further purpose of intimidating, threatening and coercing the plaintiff fom further engaging in his previously described civil rights activities, or permanently disabling him so as to make it impossible for him to continue with the said activities; and was committed with the further purpose of intimidating, threatening, and coercing the plaintiff from further engaging in his previously described civil rights activities, or permanently disabling him so as to make it impossible for him to continue with the said activities; and were committed with the further purpose of frightening, coercing, and threatening Negro citizens of the United States from exercising their rights guaranteed by the Constitution, laws, and statutes of the United States, including, in particular, the right to register and vote in all elections without discrimination on the ground of race, color, or previous condition of servitude, and their right to free speech and peaceably assembly.

13. By reason of the foregoing facts, the plaintiff is entitled to recover of the defendant Pridgeon the sum of $10,200 as actual, compensatory damages, and the further sum of $100,000 as punitive damages.

regulations, or of customs and usages of the State of Florida, and was done subjecting the plaintiff and other persons to a deprivation of rights secured by the Constitution of the United States, and particularly Amendments Fourteen and Fifteen thereof, and the laws of the United States, in that:

a) ~~The policy of the public officials of the City and County of Madison, Florida has been and continues to be to erect all possible obstacles in the way of registration and voting by the Negro citizens, which obstacles include, but are not limited to, the previously mentioned limitation on the days and hours during which the registration office is opened.~~

a) It is a longstanding custom and usage of the officials of the State of Florida in the City and County of Madison, Florida to refrain from preventing assaults upon and harrassment of Negroes, and particularly Negroes engaged in civil rights activities, and to similarly refrain from preventing assaults upon and harrassment of white persons engaged in civil rights activities; and said officials, in particular the defendants Rowe, Cherry, Powell, and WILLIAMS customarily release the perpetrators thereof with no penalty, or with only a nominal penalty.

b) The defendant, and the persons who acted in concert with him in connection with the above described assault, relied upon the said customs and usages of the State of Florida in making the assaults herein complained of.

WHEREFORE, plaintiff prays that this Court enter judgement as follows:

a) that the plaintiff have and recover the defendant Pridgeon the sum of $110,200 and the cost of this action;

b) that the defendant Pridgeon, and all persons acting under his direction or in concert with him, be permanently enjoined from assaulting or harrassing Negro citizens, or white persons engaged in civil rights activities, or doing any other act for the purpose of xoercing, threatening, or otherwise interfering with their free and full exercise of any of the rights guaranteed to them by the Constitution, laws, and statutes of the United States, including, but not limited to, the right to vote guaranteed in the Fifteenth Amendment to the Constitution of the United States.

c) and for such other and further relief as the Court may deem just and equitable.

PLAINTIFF FURTHER PRAYS that this Court hold a hearing at the earliest possible date and upon such hearing, enter a temporary injunction against the defendant Pridgeon and those persons acting under his direction or in concert with him, upon the terms of the permanent injunction heretofore prayed for.

COUNT II

1. through 14. inclusive. The plaintiff here incorporates by reference, as fully as though set out herein, the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Count I of this Complaint.

15. On or about Saturday, July 31, 1965, one Johnny Brown, a Negro citizen of the United States of America who has engaged in voter registration drives and other civil rights activities, was arrested by police officers of the City of Madison, Florida, which officers are under the direction and supervision of the defendants, Cherry adn WILLIAMS; and on Monday, August 2, 1965, the said Johnny Brown was brought before the defendant Rowe, acting in his capacity as City or Municipal Judge of the City of Madison, Florida, on two occasions: in the morning, for the arraignment, and in the afternoon, for a purported trial. The plaintiff was an observer on both occasions, and, in particular, upon the latter occasion.

16. After the purported trial of the said Johnny Brown upon the latter occasion, plaintiff had left the court room, and outside the prescence of the Court, the plaintiff met the defendant Cherry; the plaintiff then made an informal comment to the defendant Cherry with regard to the proceedings in the Johnny Brown case and in particular, with regard to plaintiff's opinion that Brown had been improperly denied his right to counsel. The said comment was unaccompanied by any words or acts of violence, or offer of violence, and was anexercise of plaintiff's right of free speech as guaranteed to him by the Constitution of the United States and of the State of Florida.

17. Thereupon, acting under color of his office as Chief of Police, but without any legal or probable cause of provocation, and with actuial malice, the defendant

City Hall for the stated purpose of forcing the plaintiff to repeat his comment to the defendant Rowe.

18. After reaching said City Hall in the custody of defendant Cherry, after being brought before the defendant Rowe, the plaintiff declined to make any statement to the defendant Rowe, and then sought to end his unlawful imprisonment by walking peacefully away from the defendants Rowe and Cherry.

19. Thereupon, the defendant Powell, acting under color of his office as a police officer of the City of Madison, Florida, who was also present at the last-mentioned time and place with defendants Rowe and Cherry, physically assaulted the plaintiff by striking him violently on or about the head. The said assault by the defendant Powell was committed with the malicious purpose of causing the plaintiff physical harm; and it was wholly unprivileged and unprovoked.

20. The said assault was committed by the defendant Powell in the presence of the defendant Cherry and Rowe, and was committed by him as their agent and with their approval; and by their conduct subsequent to the said physical assault, the defendants Cherry and Rowe have ratified and approved the said physical assault as being their own act as well as the act of the defendant Powell.

21.. The defendants Cherry and ~~Rowe through their agent~~ Powell are under the general supervision and direction of the defendant WILLIAMS, in his capacity as Mayor of the City of Madison, Florida.

22. The said physical assault was committed by the defendants Cherry and Rowe through their agent, the defendant Powell, for the further purpose of punishing the plaintiff for his previously-described exercise of his right to freedom of speech as guaranteed to him by the Constitutions of the United States and the State of Florida; and for the further purpose of "making an example" of the plaintiff, they well knowing of his civil rights activities, and in particular his activities with regard to voter

registration, and thus for the ultimate purpose of frightening and intimidating Negro citizens of the United States so as to prevent such citizens from exercising all of their rights, privileges, and immunities guaranteed them by the Constitution, laws, and statutes of the United States of America and in particular, for the purpose of intimidating and frightening the said Negro citizens so as to prevent them from exercising their right to vote as guaranteed by the Fifteenth Amendment to the Constitution of the United States.

23. The false arrest of the plaintiff by the defendant Cherry was part of the same over-all plan and course of action, of which the assault by the defendant Powell was another act; and was done for the same malicious purposes as are set out in paragraph 22, above.

24. By reason of the said false arrest and imprisonment, and the subsequent assault, the plaintiff's pride, dignity and standing in the community have been impaired; he has suffered serious indignities, he has suffered great pain and suffering; and, by reason of the malicious and willful character of both the said false arrest and the said assault upon him he is entitled to punitive damages as well as compensatory damages, all in the aggragate sum of $60,000.

25. The above described ~~assault false arrest~~ false imprisonment of plaintiff and the assault upon the plaintiff were actions of the State of Florida, both because the perpetrators thereof were officers of the State of Florida acting under color ~~of~~ of their respective offices, but also because they were part of the customs, usages, plan and course of conduct set out in paragraphs 4 and 14 above; and the same were part of the same overall policy which resulted in the assault by the defendant Pridgeon, described in paragraph 9 above.

WHEREFORE, plaintiff prays judgement as follows:

a) that the plaintiff have and recover of the defendants Cherry, Powell, and Rowe the sum of $60,000, and the cost of this action.

b) that the defendant Cherry, Rowe, Powell, and Williams, their agents, servants, and employees, their successors in office, and all persons acting under their direction or in concert with them, be temporarily and permanently enjoined and restrained from assaulting, or harrassing Negro citizens, or white persons engaged in civil rights activities, for the purpose of coercing, threatening, or otherwise interfering with their free and full exercise of any of the rights guaranteed to them by the Constitution, laws, and statutes of the United States, including, but not limited to, their right to speak freely, to peaceably assemble, and to register to vote and to vote; and further, that they be ordered to give full and adequate protection to Negro persons, and to white persons engaged in civil rights activities, so as to reasonably protect all such persons from assault and harrassment by private citizens seeking to interfere with the exercise of the said rights.

c) and for such other and further relief as this Court may deem just and equitable.

State of Florida)
) SS:
County of ______)

The undersigned, being first duly sworn, deposes and says that he has read the above Complaint, and that the facts set forth therein are true.

____

Subscribed and sworn to before me this ____ day of August, 1965.

____
Notary Public

My commission expires:

____

Earl M. Johnson
625 West Union Street
Jacksonville,Florida
(355-5196)

John D. Due, Jr.
540 ½ West Brevard St.
Tallahassee, Florida
(222-2173)

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CArl Rachlin
General Counsel CORE
38 Park Row
New York 38, New York

Attorneys for Plaintiffs

AUG 1 8 1965

~~AUG 1 8 1965~~

CORE SCHOLARSHIP, EDUCATION and DEFENSE FUND

540½ West Brevard St. Tallahassee, Florida

JOHN D. DUE, Jr.
FLORIDA COUNSEL

Phone 222-2317

August 9, 1965

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Mr. Carl Rachlin, Esq.
General Counsel, C O R E
38 Park Row
New York, New York 10038

Mr. Alvin J. Bronstein, Esq.
603 North Farish Street
Jackson, Mississippi

Re: Bigelow vs. Pridgeon et al., 65-281-Civ-j
McCall et al. vs. Cherry et al., 65-282-Civ-j

Gentlemen:

Enclosed are copies of the above-captioned complaints, which were prepared by Mr. Weisman and me, and were filed in the U. S. District Court, Jacksonville, on Monday, August 9, 1965.

Also enclosed are copies of the Notices of Hearing on Temporary Injunction in each action.

Pursuant to arrangements made with Judge Bryan Simpson, each case is set for hearing on temporary injunction at 10:00 am on August 17, 1965, ---the same time as was set for the Cherry Lake Case (65-277-Civ-j). It is contemplated that the Bigelow and McCall cases will be consolidated for hearing, since they involve substantially the same defendants and issues.

I will not be here at the time of hearing; Mr. Richard Arens is now here, will be fully familiarized with both cases, and will be able to assist Mr. Weisman in the Trial of both injunction hearings; both actions seem fully under control.

Very truly yours,

David J. Halperin

DJH/jmg

MSS
546

SEDFRE

BOGALUSA (LA.) SCHOOL BOARD vs. BOGALUSA CIVIC AND VOTERS LEAGUE, et al, 1965
[SCHOOL DESEGREGATION]

Box 34
Folder 24

State Historical Society of Wisconsin

Please Retain Original Order

BOGALUSA SCHOOL BOARD

VERSUS

BOGALUSA CIVIC & VOTERS LEAGUE, ET AL

DOCKET NUMBER ____________

22ND JUDICIAL DISTRICT COURT

PARISH OF WASHINGTON

STATE OF LOUISIANA

TEMPORARY RESTRAINING ORDER

TO: BOGALUSA CIVIC & VOTERS LEAGUE and/or BOGALUSA VOTERS LEAGUE and
OFFICERS and MEMBERS OF SAID LEAGUE,
A. Z. YOUNG, Individually,
ROBERT HICKS, Individually,
GAYLE JENKINS, Individually,
ROYAN BURRIS, Individually,
SAM BARNES, Individually,
[illegible] BARNES, III, Individually,
MARY WILLIAMS, Individually,
R. T. YOUNG, Individually,
JOSEPH SARTEN, Individually,
CHARLES SIMS, Individually,
[illegible] ANDERSON, Individually

GREETINGS:

Whereas the above entitled and numbered action for injunction has been filed in this Court on the [illegible] day of October, 1965, and this Court has made and allowed an order in the said cause whereby you are ordered to show cause on the 27th day of October, 1965, at 9 [illegible] o'clock A. M., why a preliminary writ of injunction should not be issued herein pending trial of the plaintiff's application for permanent injunction;

And whereas the Court is satisfied from the facts and allegations appearing in the said petition and affidavit that immediate and irreparable injury, loss, and damage will result to the plaintiff before notice can be served and a hearing had on plaintiff's application for a preliminary injunction, without bond.

NOW, THEREFORE, you, your officers, agents and employees, or anyone acting in your behalf, are hereby temporarily restrained, enjoined, and prohibited from enticing, compelling, permitting, and/or soliciting any pupil of the public schools of the City of Bogalusa to absent themselves from said schools for the purposes of picketting, marching, parading, or the doing of any other acts of like nature, and specifically are prohibited from enticing, compelling, permitting, or soliciting said students to be absent from school on regular school days during regular school hours, o[illegible] any or all other acts in contemplation of which a child may be persuaded not to attend the school to which he is ordinarily assigned.

This temporary restraining order shall expire at the end of ten (10) days from the date hereof, unless extended by this Court prior to its expiration for good cause shown and reasons therefor entered of record herein.

WITNESS the Honorable Jim W. Richardson, Judge of the said Court, at Franklinton, Washington Parish, Louisiana, this 20th day of October, 1965, at 6:00 o'clock A. M.

CLERK OF COURT

A True Copy of Original

Clerk of Court

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE, INC.
603 N. FARISH STREET
JACKSON, MISS.
PH. 601-948-4191

Filed 10/21/65

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

BOGALUSA SCHOOL BOARD,
Plaintiffs,

VS

BOGALUSA CIVIC AND VOTERS LEAGUE, ET AL,
Defendants

CIVIL ACTION 16048

DIVISION C

MOTION TO STAY EX PARTE TEMPORARY RESTRAINING ORDER ALTERNATIVELY TO GRANT AN IMMEDIATE HEARING ON MOTION TO DISSOLVE EX PARTE TEMPORARY RESTRAINING ORDER

The temporary restraining order should be stayed or dissolved because:

1. Free speech has a preferred position among the liberties protected by the U.S. Constitution and in the first instance it was the duty of the city council of Bogalusa to ordain that such activity prohibited herein presents a clear and present danger to the interests of the city.

2. Use of a temporary restraining order to prohibit free speech violates the constitutional basis for speech in the United States namely that free speech is so important that it is encouraged by license to speak first and suffer the penalty of the ordinance afterwards. Notwithstanding the language of the restraining order, it is obvious that the heart and purpose of same is to prohibit any demonstrations or protests in the city of Bogalusa. This constitutes a particularly noxious deprivation of constitutional rights by use of prior restraint.

See: Near v. Minnesota, 283 U.S. 697.
Cox v. Louisiana, 85 S. Ct. 453.
Edwards v. South Carolina, 372 U.S. 229.
Thomas v. Collins, 323 U.S. 516.
Kunz v. New York, 340 U.S. 290.

3. The exception to the prior restraint rule is that only where a clear and present danger to some paramount interest of the state is imminently threatened can speech be regulated. Note even in emergencies speech is not to be prohibited but only regulated. Mere fear of serious injury alone will not warrant the suppression of speech.

In the instant case, the use of prior restraint is particularly noxious, when the state has, as it does the remedy of subsequent punishment.

The Bogalusa School Board complaint fails to allege the absence of an adequate remedy at law but in fact there are at least two remedies at law:

a. Allegation XIII says defendants' acts are calculated to disturb the peace. Defendants could be charged criminally with disturbing the peace.

b. Allegation V says defendants enticed school children to absent themselves from school contrary to the laws of the State of Louisiana. Defendants could be charged criminally with violation of L.S.A.-R.S. 17:221.

In fact six of the defendant-petitioners were arrested on October 20, 1965 and charged with contributing to the delinquency of minors.

4. The state cannot attempt to limit the free expression of a particular point of view, no matter how unpopular it may be!

See: Thornhill v. Alabama 310 U.S. 88.
Brotherhood of Railroad Trainmen v. Virginia 377 U.S.

5. Children do not lose their First Amendment rights by going to state operated schools. The interest of parents with respect to the welfare of children is superior to that of the state. The state cannot interfere with the free speech of children or with their right to demonstrate their feelings, even though such dem onstration may be disruptive.

See: West Virginia v. Barnette 319 U.S. 629.
Prince v. Massachusetts 321 U.S. 158.
Pierce v. Society of Sisters 268 U.S. 510.
Meyer v. Nebraska 262 U.S. 390.
Cooper v. Aaron 358 U.S.

6. The national policy with reference to integrated schools was voiced eleven years ago in Brown v. Board 347 U.S. 483, in the 1964 Civil Rights Act, and in the Standards set up by the United States Department of Health, Education and Welfare. The national policy has not been faithfully followed in the City of Bogalusa. The Bogalusa School Board comes into a court of equity with unclean hands.

7. Defendants are the victims of an impermissable type of entrapment proscribed by Cox v. Louisiana 85 S. Ct. 453. Allegation VII of plaintiffs' complaint shows defendants were on two occasions given parade permits by the city and now the city seeks to penalize defendants for use of the permits.

8. Even assuming arguendo, that the Bogalusa School Board has complied with the letter of the law, if not the spirit, defendants were protesting against the unequal facilities of so-called integrated schools. Plaintiffs in allegation VI say the demonstrations have worked to the detriment of the proper administration of the Bogalusa School System. The easy answer to that is that the proper administration of the Bogalusa School System by furnishing totally integrated schools would have avoided the demonstrations. The crux of the question is whether the interest of a school board not in compliance with the spirit of the law can prevail over the national

policy on schools and the national policy on free speech.

9. Plaintiffs, by their silence, admit that the picketing has been peaceful.

10. The members of the all white school board, elected by voters from which Negroes have been traditionally excluded, cannot fairly represent the interests of the Negro children by failing those who seek to improve the quality of education afforded them.

See: Steele v. Louisville and Nashville R.R. 323 U.S.192.

11. The plaintiffs merely allege irreparable injury without outlining the nature of the injury. This is a frivolous allegation, for the bare bones of the matter is that by past and present sins of omission the board has created a situation which it now claims is one of irreparable harm to itself.

Defendants respectfully pray that the Court grant the Motion To Stay The Enforcement Of The Temporary Restraining Order or in the alternative to grant an immediate hearing or in any event no later than October 23, 1965, following such hearing dissolve the Temporary Restraining Order.

Respectfully Submitted,

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: Nils R. Douglas

OF COUNSEL:

ALVIN J. BRONSTEIN
603 N. FARISH STREET
JACKSON, MISSISSIPPI

JOSEPH HARRIS DAVID
932 ROYAL STREET
NEW ORLEANS, LOUISIANA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Motion for Stay or Dissolution of Temporary Restraining Order was served on Woodrow W. Erwin, Attorney for the Plaintiff-Respondent, by depositing same in the United States Mail, addressed to him at his office at P.O. Box 393, Franklinton, Louisiana.

Oct 21, 1965

Nils R. Douglas
ATTORNEY FOR DEFENDANTS - PETITIONERS

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

BOGALUSA SCHOOL BOARD

versus

BOGALUSA CIVIC AND VOTERS LEAGUE, ET AL

* *

MOTION FOR STAY OF REMAND PENDING APPEAL

FACTS

1. On Wednesday, October 20th 1965, The Bogalusa School Board filed complaint Number 25-733 in the 22nd Judicial District Court, Parish of Washington, State of Louisiana, seeking an Ex Parte Temporary Restraining Order, Preliminary and Permanent Injunctions against The Bogalusa Voters League.

2. On Wednesday, October 20th 1965, The Honorable Jim W. Richardson, Judge of the 22nd Judicial District Court signed the Ex Parte Temporary Restraining Order which in essence prohibited the named parties from:

> "...Enticing, compelling, permitting, and/or soliciting any pupil of the public schools of the City of Bogalusa to absent themselves from said schools for the purpose of picketing, marching, parading, or the doing of any other acts of like nature, and [redacted] specifically are prohibited from enticing, compelling, permitting or soliciting said students to be absent from school on regular school days during regular school hours..."

3. On Thursday, October 21, 1965, defendants removed said injunction to the Federal District Court for the Eastern District of Louisiana. Also filed with the removal petition was a

Motion To Stay Ex Parte Temporary Restraining Order Alternatively To Grant An Immediate Hearing On Motion To Dissolve Ex Parte Temporary Restraining Order.

4. The removal was allotted to the Honorable E. Gordon West and given number 16408.

5. Counsel for removers waived notice of filing of motion to remand and agreed to a hearing on said motion on Wednesday, October 27, 1965.

6. The Honorable E. Gordon West on Wednesday, October 27, 1965, remanded the case back to the 22nd Judicial District Court, and denied an oral motion for a stay of the remand order pending appeal to The Honorable Fifth Circuit Court of Appeals.

ESSENCE OF REMOVAL PETITION

7. The removal petition asserted grounds under 28 U.S.C. 1443 (1) and (2).-

a. Specifically under 1443 (1) removers claimed:

   1). Denial and inability to enforce in Louisiana courts rights granted by the first and fourteenth amendments to the U.S. Constitution, 18 U.S.C. 242, 42 U.S.C. 1981, and 42 U.S.C. 1983.

b. Specifically under 1443 (2) removers claimed:

   1). Color of authority to boycott under the first and fourteenth amendments of the United States Constitution, 18 U.S.C. 242, 42 U.S.C. 1981, and 42 U.S.C. 1983.

   2). Refusal not to boycott Bogalusa Schools under the same authority cited in 7 (b) (1) above.

c. Additionally removers claimed:

   1). The sole purpose of the injunction was to intimidate removers, punish and deter them from exercising rights under Brown v. Board, The first and fourteenth amendments to the U.S. Constitution, 18 U.S.C. 242, 42 U.S.C. 1981, and 42 U.S.C. 1983.

d. Additionally removers specifically relied on Peacock v. City of Greenwood, 347 F. 2d 697, (5th Circuit 1965) and Cox v. Louisiana, 5th Circuit, No. 22-657 decided on June 29, 1965.

ERRORS BY COURT BELOW

PROCEDURAL

8. Removers position that the sole issue before the District Court was whether on a fair reading of the removal allegations, said allegations stated a claim under 28 U.S.C. 1443 (1) and (2) was denied by the court.

Removers position was that the only way the case could be remanded was if under no reasonable interpretation could the allegations come under 28 U.S.C. 1443 (1) and (2). This was denied by the court.

Removers unsuccessfully sought to adduce proof in support of their removal allegations.

That the Peacock and Cox cases supra was binding on the district court.

JURISDICTION

9. Jurisdiction is sought under:

a. Title IX section 901 of P.L. 88-352, Civil Rights Act 1964 which provides appeals of remands.

b. Plaintiffs action is a civil action commenced in a state court against persons who are denied and cannot enforce in the courts of Louisiana, rights under laws providing for the equal rights of citizens of the United States such laws including, but not limited to the first and fourteenth amendments to the United States Constitution, 18 U.S.C. 242, 42 U.S.C. 1981, 42 U.S.C. 1983, the 1964 Civil Rights Act and the Statement of General Policies under Title VI of The Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools. Said policy statement being made by the U.S. Department of Health, Education and Welfare.

c. The acts and conduct which plaintiffs' petition seeks to enjoin, and which the state courts temporary restraining order has already enjoined are acts and conduct under color of authority derived from laws providing for equal rights or acts and conduct which petitioners are refusing to do on the ground that it would be inconsistent with certain laws, which laws include, but are not limited to those stated in allegation 9 (b) above.

ATTACHMENTS

10. Attached hereto and made part hereof are copies of:

1. The complaint of The Bogalusa School Board.
2. The Temporary Restraining Order issued by The State Court.
3. The Removal Petition with Notice of Removal and Certificate of Service.
4. The Motion to Stay Ex Parte Restraining Order, Alternatively to Grant an Immediate hearing on Motion to Dissolve Ex Parte Temporary Restraining Order, together with Notice of Motion and Certificate of Service.
5. The Motion to Remand and Memorandum.
6. The Answer to The Removal Petition.

WHEREFORE, petitioners pray that:

a. This matter be presented forthwith to the Judges of The Fifth Circuit Court of Appeal.

b. The remand order of the District Court be stayed pending review of that order by this court.

c. The Court grant petitioners such other relief as from time to time appears just and proper.

Respectfully submitted,

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

BY:______________________________

ALVIN J. BRONSTEIN, ESQ.

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932 ROYAL STREET

NEW ORLEANS, LOUISIANA

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Filed 10/21/65

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

BOGALUSA SCHOOL BOARD,
Plaintiffs,

VS

BOGALUSA CIVIC AND VOTERS LEAGUE, ET AL
Defendants,

16048
Div. C

PETITION FOR REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION:

The petition of The Bogalusa Civic And Voters League respectfully shows:

1. The civil action which defendants here remove is titled as above and was commenced by service of a temporary restraining order and rule to show cause why a preliminary injunction should not issue, a copy of which is annexed hereto, on October 20, 1965. The action was commenced in the 22nd Judicial District Court, Parish of Washington, State of Louisiana, which court is within the Eastern District, New Orleans Division of the United States District Court. The temporary restraining order was issued on October 20, 1965, without either notice or hearing.

2. Plaintiff, Bogalusa School Board, is the duly constituted authority to operate and maintain the Bogalusa School system in Bogalusa, Washington Parish, Louisiana. Said School Board sued through the individual members thereof Alcous E. Stewart, President;

H. Donald Lea; Emmett F. Breland; John C. Mills and Corbett Mitchell together with M.J. Israel, Superintendent of said schools.

3. Defendant, Bogalusa Civic and Voters League, is upon information and belief an unincorporated, non profit organization dedicated to the improvement of the status of Negroes in Bogalusa and to securing for its members and all Negroes similarly situated all rights guaranteed under the Constitution of the United States.

4. Plaintiffs seek to preliminarily and permanently enjoin defendants from "...enticing, compelling, permitting and/or soliciting any pupil of the public schools of the City of Bogalusa to absent themselves from said schools for the purposes of picketting, marching, parading, or doing of any other acts of like nature and specifically from enticing...said students to be absent from school on regular school days during regular school hours...."

5. The acts and conduct which plaintiffs petition seeks to enjoin and which the state courts temporary restraining order has already enjoined are acts and conduct permitted and protected by the first and fourteenth amendments to the United States Constitution and laws.

6. Plaintiffs' action is a civil action commenced in a state court against persons who are denied and cannot enforce in the courts of Louisiana rights under laws providing for the equal civil rights of citizens of the United States such laws including but not limited to the first and fourteenth amendments to the United States Constitution, 18 U.S.C. 242, 42 U.S.C. 1981, and 42 U.S.C. 1983 and that action, therefore can be removed to this court under 28 U.S.C. 1443(1).

7. The acts and conduct which plaintiffs' petition seeks to enjoin, and which the state courts' temporary restraining order has already enjoined are acts and conduct under color of authority

derived from laws providing for equal rights, or acts and conduct which petitioners are refusing to do on the ground that it would be inconsistent with certain laws, which laws include but are not limited to the laws alleged in paragraph 6 of this petition.

8. This ex parte injunction was issued for the sole purpose and effect of harassing and intimidating your petitioners and other members of said class in order to punish them and to deter them from exercising their equal civil rights guaranteed by Brown v. Board of Education, 347 U.S. 483, the first and fourteenth amendments to the United States Constitution, 18 U.S.C. 242, 42 U.S.C. 1981 and 42 U.S.C. 1983. The result of this injunction is to deny petitioners and other members of said class the equal protection of the law.

9. This ex parte injunction was issued for the purpose and effect of harassing and intimidating your petitioners to discourage them from seeking totally integrated schools in the City of Bogalusa or to discourage them from seeking equal facilities in the so-called integrated schools.

10. The allegation that state action was designed and effective to harass and intimidate Negroes for the purpose of coercing them to forego their equal civil rights has been held to state a sufficient case for removal in Peacock v. City of Greenwood, 347 F. 2d 697 (5th Cir. 1965), and Cox v. Louisiana, 5th Circuit No. 22, 657, opinion granting stay, June 29, 1965.

11. This petition is filed on behalf of the Bogalusa Civic and Voters League and all of the individuals named in the state court petition and restraining order.

WHEREFORE, petitioners pray that these civil proceedings be removed from the 22nd Judicial District Court, Parish of Washington, State of Louisiana, for hearing pursuant to 28 U.S.C. 1443 and 1446.

Respectfully submitted,

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: Nils R. Douglas

ALVIN J. BRONSTEIN
603 NO. FARISH STREET
JACKSON, MISSISSIPPI

HARRIS DAVID
932 ROYAL STREET
NEW ORLEANS, LOUISIANA

VERIFICATION

I, NILS R. DOUGLAS, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the Bar of the State of Louisiana and of the United States District Court for the Eastern District of Louisiana;

That I am the duly authorized attorney for petitioners herein, authorized to prepare and verify the annexed petition;

That I have read the annexed petition and know the contents thereof;

That I know of my personal knowlege that all facts stated therein are stated on information and belief;

That as to subject matter, I believe the petition to be true, and;

That I sign the verification on behalf of the petitioners, because the annexed petition deals chiefly with matters of law and legal inference to be drawn from facts alleged and/or of which I as an attorney have more knowlege than the petitioners.

/S/ Nils R. Douglas
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 21st DAY
OF OCTOBER, 1965.

/S/ Robert F. Collins
NOTARY PUBLIC

new
file
Calcasieu
[illegible]
Monroe

July 14, 1965

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Bob, Nils, and Lolis:

Thank you for the copy of the order in the Bogalusa case. I consider it a remarkable piece of work and all of you and Al should be given nothing less than the highest praise.

We have just received word today that on August 4, there will be a $2,500,000 school bond issued on noon of that day for School District #22, Calcasieu Parish which I understand includes Lake Charles.

In addition, on August 10, at noon there will be a $6,000,000 Monroe school bond. Since we have the basic complaint from the St. Tammany and Jackson Parish cases may I urge you very strongly that complaints be filed very soon in both these cases. I am sure there are a lot of people in Monroe and Lake Charles who would be happy to be plaintiffs. The earlier we start the better, so that we can hopefully stop the sale of two big issues of this kind.

It is also my urgent request that we forthwith begin a school case in Bogalusa immediately if one has not already been started. Please advise me on this last point and we will be glad to prepare the brief up here if you people do not have the time. Just give us the pertinent information for Washington Parish and we will try to move it rapidly.

Cont'd....

From my talks at the convention with a substantial number of southern field staff it is clear that schools are either at or near the top of every community desire. I know we have the expertees and I would like to have us move rapidly. Louisiana is in such a state right now where vigorous action on our part can produce wonderful results.

Please keep me closely advised.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Messrs. Bronstein
Dennis
Haley
Hastings
Kirsch
Rich
Dr. Wiley

Bogalusa

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

July 16, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

COPY

Mr. John Doar
Chief Civil Rights Division
United States Department of Justice
Washington, D. C.

Dear Mr. Doar:

We the undersigned residents of the City of Bogalusa in the Parish of Washington, State of Louisiana hereby complain to you of the fact that the schools to which our children are compelled to go are entirely segregated on the basis of race or color of the children. No Negro child is permitted to attend any class any where with white children and the reverse is also true.

Furthermore the schools reserved for Negroes are substantially inferior both with respect to facilities, equipment and with respect to standard of teaching and curriculum.

There are trade schools available only to white children and none for Negro children. Local employers use this excuse that Negro high school graduates are not as well trained as one of the methods to avoid Title VII of the Civil Rights Act.

We request that the Department of Justice forthwith commence proceedings fully to integrate the Elementary Schools, Junior High Schools, High Schools and Vocational Schools of the City of Bogalusa, Parish of Washington, State of Louisiana.

Respectfully yours,

[illegible]

July 19, 1965

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Bob, Nils, and Lolis:

I have your letter of the 16th addressed to John Doar concerning the Bogalusa school case. I trust the letter to Mr. Doar does not preclude your bringing a suit forthwith for the desegregation of the schools in Bogalusa. Rest assured you will be paid for every minute of your time. I want CORE to be leading all the time, the battle in Bogalusa. Rich and I are coming to New Orleans either Thursday night for Friday morning. It is my intention to stay indefinitely, at least a couple of weeks.

With best regards,

Sincerely,

CR/cs

CARL RACHLIN
General Counsel

cc: Alvin Bronstein, Esq.

P. S. Since this letter was dictated I have spoken to Bob and Lolis on the telephone and we have straightened out all of our signals.

Bogalusa
Sc case

August 19, 1965

Alvin Bronstein, Esq.
LCDC
603 N. Parish Street
Jackson, Mississippi

Dear Al:

Enclosed is a copy of my letter to Howard Moore and Benjamin Smith which speaks for itself.

At your earliest convenience can you send us a set of the Bogalusa injunction papers? We do not seem to have them here. At this moment they could be very useful for some other problems that are arising in the north.

With regard to Mark Howe's comments we are going over those and in a day or two we will write to you concerning them. Preliminarily the differences are easily resolved.

I received your letter with regard to Stephen Miller, Barry Goldstein, and David Cleverdon. The reason I had written to you was, toward the end of July I had been served, through the mail, with a copy of the Fifth Circuit notice that these three cases were on the docket. Unfortunately, I do not know why they were sent to me. We do not have a record of the cases. I thought perhaps you did know something about it. Perhaps we ought to check with one of the other lawyers in Jackson, such as Young or Rosenthal and find out who is the attorney of record in these cases and see what is being done.

I also received in today's mail a rather mysterious document from the Fifth Circuit which I do not understand. It was regarding the so-called

Cont'd.....

appeal in Andrews v. City of Monroe and frankly I do not understand what that was all about. I trust you will advise me accordingly.

With kindest regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc. 1

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Claiborne Parish

OCT 20 1965

[illegible]
Jackson Parish

October 18, 1965

Carl Rachlin, Esq.
38 Park Row
New York, New York

Dear Carl:

We will appeal the Claiborne Parish and Jackson Parish decisions. We assume that your office will handle the arguments.

I am concerned that the appeal will delay the matriculation of the Jackson and Claiborne plaintiffs. A motion for injunctive relief pending appeal under 28 U.S.C. 1651 might afford relief. Paragraph 7 of the Jackson plan provides that if any part of the plan is held invalid, the rest continues in effect. One might argue that if any part of the plan is appealed, the rest of the plan continues in effect.

Bob, Nils and Lolis are fine, and send their regards.

Best wishes,

Harris

HARRIS DAVID

HD/ew

Dear Harris

We will

November 2, 1965

Alvin Bronstein, Esq.
LCDC
603 N. Farish Street
Jackson, Mississippi

Dear Mr. Bronstein:

Could we have a copy of the new Bogalusa papers?

Thank you.

Sincerely,

Charlaine Shelto
Sec'y to Carl Rachlin

/cs

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF
THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

November 8, 1965

NOV 9 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Dear Carl:

I have your secretary's note of November 2. She does not make clear which Bogalusa papers you are requesting, so I am enclosing copies of our contempt application as well as the pleadings in the School Board's Injunction action.

Sincerely,

Alvin J. Bronstein

AJB:jb

National Office: 156 Fifth Avenue, New York, N. Y. 10010, (212) YU 9-7530.
Contributions to LCDC of ACLU are tax-deductible.

MSS 546 SEDFRE

BORDEN, R. F. AND LEROY VS CORE, TULSA, OKLAHOMA, 1964
(DEMONSTRATION RE: PUBLIC ACCOMMODATIONS)

Box 34
Folder 25

State Historical Society of Wisconsin

Please Retain Original Order

DISTRICT COURT
FILED
APR 17 1964
SAMUEL W. FRY, COURT CLERK
STATE OF OKLAHOMA-TULSA COUNTY

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

R. F. BORDEN and LEROY R. BORDEN,)
d/b/a BORDEN'S CAFETERIAS,)
Plaintiffs,)
vs.) NO. 107714
CONGRESS OF RACIAL EQUALITY,)
TULSA CHAPTER, an un-incorporated)
association, et al.,)
Defendants.)

MOTION TO MODIFY

Come now the Defendants and move the Court to modify its restraining order of April 15, 1964, in the above-entitled cause, for the following reasons, to-wit:

I.

That the Petition upon which the restraining order issued, does not state facts sufficient to constitute a cause of action, and to entitle the plaintiffs to the temporary relief provided in the restraining order.

II.

That by the restraining order, the plaintiffs seek protection of the Court in their continued violation of the Constitutional rights of the defendants, and in the continued violation of the declared public policy of the City of Tulsa.

III.

That hearing on the application for temporary injunction is set by said order on the 20th day of May, 1964, after the answer date in the cause, being, therefore, too long a period for a temporary restraining order.

WHEREFORE, defendants pray that the said order be modified and that hearing on the application for temporary injunction be advanced.

____

____

____

Attorneys for Defendant s

CERTIFICATE OF SERVICE

S/ by Attorney

IN THE DISTRICT COURT WITHIN AND FOR TULSA COUNTY

STATE OF OKLAHOMA

R. F. BORDEN and LEROY R. BORDEN,
d/b/a BORDEN'S CAFETERIAS,

Plaintiffs,

vs.

CONGRESS OF RACIAL EQUALITY, TULSA
CHAPTER, an un-incorporated association,
MILTON Y. GOODWIN, individually and as President
and member of the Congress of Racial
Equality, Tulsa Chapter; NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED PEOPLE,
TULSA CHAPTER, an un-incorporated association,
BEN HILL, as President and member; and B. S.
ROBERTS, individually and as Youth Counsellor and
member of said un-incorporated association, and the
YOUTH COMMITTEE OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE, TULSA CHAPTER, VINCENT DUNN,
individually and as President and member of said
committee; STUDENT COMMITTEE ON HUMAN
RIGHTS, an un-incorporated association, DANIEL
GREGORY DRYZ, individually and as Chairman and
member of said un-incorporated association; and
JOHN DOE and MARY DOE, whose real names are
unknown and as members of said defendant organizations
and as representatives of the class for all other
persons and entities similarly situated.

Defendants.

No. 105714

DISTRICT COURT
FILED
APR 15 1964
SAMUEL W. FRY, COURT CLERK
STATE OF OKLAHOMA-TULSA COUNTY

PETITION

This action is brought and maintained by plaintiffs above named, against defendants above named, individually and as representatives of the class for all other persons and entities similarly situated, acting separately, jointly and in concert, to obtain full injunctive relief, temporary restraining order, temporary injunction and permanent injunction, against said defendants above named and as representatives of the class of and for all other persons and entities similarly situated, on account of the arbitrary, deliberate, willful,

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

illegal and wrongful acts of said defendants above named in their individual and representative capacities, committed and threatened to be committed by said defendants in their individual and representative capacities against the property and property rights of the plaintiffs which said acts have and will result in great and irreparable injury, damage and harm to plaintiffs, as to which plaintiffs have no plain and adequate remedy at law and, therefore, plaintiffs are compelled to apply to and to invoke the equity jurisdiction and power of this Court for injunctive relief.

1.

Plaintiffs herein, R. F. Bowden and Lorey R. Bowden, are residents of Tulsa County, State of Oklahoma, doing business as Bowden's Cafeterias.

Now and at all times pertinent to this controversy, plaintiffs are and were the owners and/or operators of six cafeterias and one restaurant in the City of Tulsa, Oklahoma, commonly referred to, designated and located as follows:

Ranch Acres	No. 1	3115 South Harvard
Sheridan Village	No. 2	4322-A East Admiral Place
Restaurant	No. 3	2615 East 11th
Northland	No. 4	571 East 36th Street North
Brook Plaza	No. 5	3410 South Peoria
Utica Plaza	No. 6	1910 South Utica
Nathan Hale	No. 7	2180 South Sheridan

Under the Constitution and the law of the State of Oklahoma, and the Statutes of the State of Oklahoma, and under the Constitution of the United States of America, plaintiffs have a fundamental and basic right as a private business operator to be protected and to be secure in their property and property rights in the maintaining and operation of said cafeterias and restaurant business, including the fundamental and basic right to be protected and to be secure through injunctive relief from interference and disturbance and disruption of plaintiffs' lawful conduct of their business by the arbitrary, deliberate, willful, illegal and wrongful acts of the defendants, and each of them, acting separately, acting jointly and in concert, and acting in their individual and representative illegal and wrongful acts of said defendants above named in their individual and representative capacities, committed and threatened to be committed by said defendants in their individual and representative capacities against the property and property rights of the plaintiffs which said acts have and will result in great and irreparable injury, damage and harm to plaintiffs, as to which plaintiffs have no plain and adequate remedy at law and, therefore, plaintiffs are compelled to apply to and to invoke the equity jurisdiction and power of this Court for injunctive relief.

I.

Plaintiffs herein, B. F. Borden and Leroy R. Borden, are residents of Tulsa County, State of Oklahoma, doing business as Borden's Cafeterias.

Now and at all times pertinent to this controversy, plaintiffs are and were the owners and/or operators of six cafeterias and one restaurant in the City of Tulsa, Oklahoma, commonly referred to, designated and located as follows:

Ranch Acres	No. 1	3115 South Harvard
Sheridan Village	No. 2	6322-A East Admiral Place
Restaurant	No. 3	2615 East 11th
Northland	No. 4	571 East 36th Street North
Brook Plaza	No. 5	9411 South Peoria
Utica Plaza	No. 6	1910 South Utica
Nathan Hale	No. 7	2100 South Sheridan

Under the Constitution and the law of the State of Oklahoma, and the Statutes of the State of Oklahoma, and under the Constitution of the United States of America, plaintiffs have a fundamental and basic right as a private business operator to be protected and to be secure in their property and property rights in the maintaining and operation of said cafeterias and restaurant business, including the fundamental and basic right to be protected and to be secure through injunctive relief from interference and disturbance and disruption of plaintiffs' lawful conduct of their business by the arbitrary, deliberate, willful, illegal and wrongful acts of the defendants, and each of them, acting separately, acting jointly and in concert, and acting in their individual and representative capacities as herein set out, which acts committed by said defendants and threatened to be committed by said defendants against these plaintiffs and citizens of the State of Oklahoma, which acts of said defendants have and will cause irreparable damage and harm to plaintiff, as to which plaintiffs have no plain and adequate remedy at law.

II.

Plaintiffs are informed and believe, and therefore, allege the facts to be that defendant Congress of Racial Equality, Tulsa Chapter, is an unincorporated association formed and existing under and by virtue of the applicable Statutes and laws of the State of Oklahoma and with its principal place of business and office located in Tulsa, Oklahoma. The exact nature and structure of said defendant unincorporated association and the names of all the members belonging to and making up said unincorporated association are unknown to plaintiffs at this time, except the names of certain members hereinafter set out. The defendant, Milton Goodwin, is a member of and is the President of said defendant unincorporated association and is the only officer of said defendant unincorporated association known to plaintiff at this time. There are other persons who are also members of said defendant unincorporated association, but the names and identities of each and such other persons and members are unknown to plaintiff at this time.

Plaintiffs further state that they do not know and are unable to ascertain the true and real name of other defendants involved herein and plaintiffs therefore, sues said unknown defendants by the names of John Doe and Mary Doe, whose real names are unknown, as provided by the applicable Statute of Oklahoma, to-wit: Title 12 OSA, Section 320.

III.

Plaintiffs are informed and believe, and therefore, allege the facts to be that defendant, National Association For the Advancement of Colored People, Tulsa Chapter, is an unincorporated association formed and existing under and by virtue of the applicable Statutes and Laws of the State of

Oklahoma with its principal place of business and office located in Tulsa Oklahoma. The exact nature and structure of said defendant unincorporated association and the names of all of the members belonging to and making up said unincorporated association are unknown to plaintiffs at this time, except the names of certain members hereinafter set out. The defendant, Ben Hill, is a member of and is the President of said defendant unincorporated association and B. S. Roberts, Youth Counsellor, are the only officers of said defendant unincorporated association and that is known to these plaintiffs at this time. Upon information and belief, plaintiffs allege the facts that the defendant, Youth Committee of the National Association for the Advancement of Colored People, Tulsa Chapter, is an integral part of the primary organization and that Vincent Dunn is a member of and is President of said committee. There are other persons who are also members of said defendant unincorporated association, but the names and identities of such other persons and members are unknown to plaintiff at this time.

Plaintiff further states that they do not know and are unable to ascertain the true and real name of other defendants involved herein and plaintiffs, therefore, sues said unknown defendants by the names of John Doe and Mary Doe, whose real names are unknown, as provided by the applicable Statute of Oklahoma, to-wit: Title 12 OSA, Section 320.

IV.

Plaintiffs are informed and believe, and, therefore, allege the facts to be that defendant Student Committee on Human Rights, is an unincorporated association formed and existing under and by virtue of the applicable Statutes and laws of the State of Oklahoma and with its principal place of business and office located in Tulsa, Oklahoma. The exact nature and structure of said defendant unincorporated association and the names of all of the members belonging to and making up said unincorporated association are unknown to plaintiffs at this time, except the names of certain members hereinafter set out. The defendant Daniel Gregory Drys is a member and is the Chairman of said defendant unincorporated association and is the only officer of said defendant unincorporated association known to plaintiffs at this time. There are other persons who are also members of said defendant unincorporated association, but the names and identities of each and such other persons and members are unknown to plaintiffs at this time.

Plaintiffs further state that they do not know and are unable to ascertain the true and real name of other defendants involved herein and plaintiffs, therefore, sues said unknown defendants by the names of John Doe and Mary Doe, whose real names are unknown, as provided by the applicable Statute of Oklahoma, to-wit: Title 12 OSA, Section 320.

V.

Under the applicable Statute and the laws of Oklahoma, and under the applicable law generally, plaintiffs bring and maintain this action for injunctive relief against the defendants above named, and each of them, acting jointly and severally and in concert, and against defendants above named, as representatives of the class of all other persons and entities similarly situated. The class of persons and entities referred to, of which the above named defendants are representative, consists of the above named defendants, their agents, representatives, privies and cohorts, including numerous other persons and entities, all of which and whom acting jointly and severally and in concert and for a common purpose have engaged in, and unless restrained and enjoined and prohibited by appropriate order and judgment of this Court, will continue to engage in and to commit arbitrary, deliberate, willful, illegal, unconstitutional and wrongful acts against and unwarranted interference with the property and property rights of these plaintiffs to the great and irreparable injury, damage and harm of plaintiffs and as to which plaintiffs have no adequate remedy at law as herein set out. The class of persons and entities referred to of which the defendants above named are representatives, are very numerous and it would be impracticable to bring them all before the Court in this action; and the question to be determined in this action is one of common and general interest to the class of persons and entities above referred of which the above named defendants are representative. Under these circumstances, plaintiffs are entitled to bring and maintain this action for injunctive relief against said defendants above named, acting jointly and severally and in concert, and against the defendants above named as representatives of the class for all other persons and entities similarly situated, and therefore, the injunctive relief to which plaintiffs are entitled herein, temporary restraining order, temporary injunction and permanent injunction should be granted by the Court as to apply, and so as to be effective against the defendants above named, and each of them, their agents, representatives, privies and cohorts, and against defendants above named as representative of the class of persons and entities similarly situated who have engaged in and committed, and who are engaging and committing, and who threaten to engage in and commit, and who will engage in and commit, the arbitrary, deliberate, willful, illegal, unconstitutional and wrongful acts against and the wrongful disturbance and interference with the property and property rights of the plaintiffs as set out herein, whether said person and entities referred to be acting primarily or secondarily.

VI.

On or about March 30, April 4, [illegible] and [illegible], 1964, the defendants above named, and each of them, their agents, representatives, privies, supporters and cohorts, and other persons and entities similarly situated and members of the class referred to herein of which said defendants above named are representative, acting jointly and severally and in concert, and acting arbitrarily, deliberately, willfully, illegally and wrongfully, have carried on, and are carrying on and threatening to continue to carry on, a course of conduct including, but not limited to, congregating and forming a large crowd of persons as purported demonstrators or pickets consisting of approximately thirty persons engaged in such mass demonstrations, picketing and "sit-ins" on and around the front door of plaintiffs' place of business and within plaintiffs' place of business, particularly Northland No. 4, 57; East 36th Street North, and Nathan Hale No. 7, 2180 South Sheridan; the mass demonstrations being unlawfully carried on and conducted by defendants, and each of them, and by members of the class of persons referred to herein, of which class defendants are representative, their agents, representatives, privies and cohorts, have been and are such as to substantially and completely block the only front entrance to plaintiffs' place of business so that ingress and egress of persons wishing to patronize plaintiffs' business and patronizing plaintiffs' business is cut off and substantially disturbed and interferred with for long periods of time. The "sit-ins", perpetrated by said defendants, constitutes trespass upon plaintiffs' property and disrupts the usual and ordinary course of plaintiffs' business and attempts to act as an intimidation and threat to plaintiffs' customers. Furthermore, said defendants above named, and the class of persons similarly situated, of which defendants are representative, by their wrongful, illegal, willful and deliberate conduct and mass demonstrations as aforesaid, have endangered and are endangering the safety of plaintiffs' place of business and the patrons thereof in that reasonable safety precautions, including but not limited to safety precautions in the event of fire, require that the only front exit of said place of business be kept free and open and not blockaded by the mass assembly and the mass demonstrations of the defendants above named, and by the class of persons similarly situated, of which the defendants are representative. Such acts and courses of conduct deliberately and wrongfully and illegally and arbitarily pursued and carried on by the defendants above named, individually and as representative of the class of other persons similarly situated are monstrous and intolerable and oppressive and legally indefensible; and same constitute and are reasonable calculations to bring about, a disturbance and breach of the peace as respects plaintiffs' place of business owned and/or operated and maintained by them.

By such wrongful course of conduct pursued and carried on, and being pursued and carried on by the defendants above named, individually and as representative of the class of others similarly situated, acting jointly and severally and in concert, they have stirred up trouble and unrest and have created disturbance and nuisance where none existed before. Moreover, by such wrongful acts and course of conduct deliberately carried on and being carried on by defendants above named, and each of them, in their individually and representative capacities, said defendants have, and are, wrongfully interferring with and disturbing the use and occupancy of plaintiffs' place of business by the plaintiffs and their patrons and customers. By reason of the matters set forth herein, plaintiffs have been and are being rendered insecure and unprotected in their property and property rights and the basic, fundamental and lawful right of plaintiffs as private businessmen to manage and operate their business in an orderly manner as they may determine, which right has been and is being denied, violated, flounted, and trampled upon by the abortive, illegal, wrongful, arbitrary and dictatorial acts and courses of conduct pursued and carried on by the defendants above named individually and as representative of the class of other persons similarly situated, acting jointly and severally and in concert, which have and are and will result in great and irreparable injury, damage and harm to plaintiffs and their property and property rights as to which plaintiffs have no adequate remedy at law.

VII.

As respects plaintiffs and their business owned, leased, operated and maintained by them and as respects the property and property rights of plaintiffs as private businessmen, the acts and course of conduct deliberately wrongfully, and illegally, willfully and arbitrarily being pursued and carried on by defendants above named, and each of them, acting in their individual capacities and as representative of the class of persons similarly situated, consisting of a large group of persons, and acting jointly and severally and in consert, have resulted in and are resulting in and will result in and constitute, among other things, but not limited thereto, the following:

(1) An unlawful trespass upon, and the unlawful taking of property, being plaintiffs' private property, without their consent, for the private use and purpose of said defendants above named, and as representative of the class of persons similarly situated, and their associates, and each of them, in direct and positive violation of the prohibitions contained in the statutes, law and Constitution of the State of Oklahoma, including, but not limited to, Section 23, Article 2, of the Constitution of the State of Oklahoma, and the Revised Ordinance of the City of Tulsa, Title 27, Chapter 5, Section 81, Trespass.

(2) An unlawful and malicious interference with the property and property rights of plaintiffs including, but not limited to, patrons and the business thereof operated and maintained by plaintiffs as private businessmen.

(3) The unlawful and deliberate creation and maintenance of a nuisance at the place of business operated and maintained by plaintiffs as private businessmen.

(4) The unlawful and deliberate stirring up of trouble and of unrest and disturbance (where none existed before) at the plaintiffs' place of business, operated and maintained by plaintiffs as private businessmen.

(5) The unlawful and deliberate blocking of the front entrance of the place of business operated and maintained by plaintiffs as private businessmen, so that free and open ingress and egress thereto and therefrom is substantially blocked and destroyed by mass picketing, contrary and in violation of the ordinance of the City of Tulsa, Title 27, Chapter 31, Section 46(b), Mass Picketing.

(6) The unlawful and deliberate creation and maintenance by such mass blocking and picketing of the front entrance of the plaintiffs' place of business, operated and maintained by plaintiffs as private businessmen, of great hazard and danger to the property and property rights of plaintiffs, and to the patrons thereof in event of fire or other catastrophe, which could result in death or injury to many persons.

(7) The unlawful and deliberate creation and maintenance of an atmosphere of danger, unrest, tension and fear wholly incompatible and inconsistent with the orderly operation and conduct of the plaintiffs' place of business operated and maintained by plaintiffs as private businessmen, on account of the mass occupancy, picketing and blocking of the front entrance of plaintiffs' place of business by said defendants above named and others of the class similarly situated of which the defendants are representative, and their associates.

(8) The unlawful and deliberate creation by mass occupancy of the plaintiffs' property and by other acts committed by defendants above named and the class of persons similarly situated of which defendants are representative, and their associates, of a disturbance and of a breach of the peace at plaintiffs' place of business, operated and maintained by plaintiffs as private businessmen.

(9) The unlawful and deliberate creation and maintenance of mass loitering about the front entrance of plaintiffs' place of business, so that and as to unlawfully interfere with and disturb and hinder and harass plaintiffs in the orderly operation and maintenance of said place of business.

(10) The unlawful and deliberate creation and maintenance by assembling in mass and congregating and loitering in large numbers around, near or immediately at the entrance of plaintiffs' place of business so as to constitute a "rout" and an "unlawful assembly" in direct and positive violation of the statutes and laws of the State of Oklahoma, and the Revised Ordinance of the City of Tulsa, Title 27, Chapter 27, Section 396, Unlawful Assembly, and Section 397, Congregating on Street, and in direct and positive violation of the fundamentals and basic right of plaintiffs to own, operate and maintain their property in an orderly and peaceful and businessmanlike manner.

(11) By such unlawful and deliberate mass occupancy and picketing of the said front entrance of plaintiffs' place of business and of "sit-ins", plaintiffs have suffered and endured, and will continue to suffer and endure, so long as said acts and course of conduct are continued by defendants above named and their associated class, great and irreparable damage and injury and harm, and the impairment, interference with, and virtual disturbance and destruction of the proper and orderly use of, the plaintiffs' property for business purposes of plaintiffs as private business concerns.

By reason of the matters set forth herein, the private property of plaintiffs is being unlawfully trespassed upon and is being unlawfully taken for the private use and purpose of defendants above named, and their associated class, without compensation and without due process, in direct and positive violation of both State and Federal Constitutions; and plaintiffs have suffered and endured, and will continue to suffer and endure, great and irreparable damage, injury and harm to their property and property rights, as to which plaintiffs have no adequate remedy at law, and concerning which plaintiffs must seek protection of this Court by injunctive relief against said defendants above named, and all other persons similarly situated and members of the class of which defendants are representative, and their associates, their agents, their representatives, their privies, their cohorts, and their supporters, and those who have brought about and encouraged the commission and infliction upon plaintiffs of the numerous unlawful acts and course of conduct set out herein.

VIII

Defendants above named and their associates, agents, representatives, privies, cohorts and supporters have open to them recourse under the resolution and ordinance passed by the City Commission of the City of Tulsa, Oklahoma, December 14, 1963, but have chosen to pursue the above described wrongful, illegal, arbitrary, wilful and dictatory acts and course of conduct and are continuing, and threatening to continue, such unlawful acts and course of conduct set forth herein, and will, unless prevented, restrained and enjoined by appropriate action, order and judgment of this Court, and without delay, continue such unlawful acts and courses of conduct set forth herein, to the great and irreparable damage, injury, harm and harassment of plaintiffs, as to which plaintiffs have no adequate remedy at law, and therefore, an emergency exists, and there is imminent danger and hazard of great and irreparable injury, damage, loss and harm to plaintiffs by reason of said wrongful acts and course of conduct pursued, and continued to be pursued, and threatened to be pursued, by said defendants above named, and each of them, their associates, supporters, agents, representatives, privies, and cohorts as set out herein; and by reason thereof plaintiffs are entitled to immediate injunctive relief and protection from this Court by way of temporary restraining order, restraining, enjoining and prohibiting said defendants above named, and each of them, their associates, agents, representatives, privies, cohorts, and supporters, and the class of other persons similarly situated of which defendants are representative, and their successors and sympathisers, from engaging in and encouraging and from doing and performing any, each and all of the wrongful acts and course of conduct set out therein, until further order of this Court; and thereafter plaintiffs are entitled to a temporary injunction pendente lite, and a permanent injunction, further restraining, enjoining and prohibiting defendants above named, and each of them, their associates, supporters, agents, representatives, privies, and coharts, and the class of other persons similarly situated of which defendants are representative, and their successors and sympathizers, from engaging in and from encouraging and from doing and performing any, each and all of the wrongful acts and course of conduct set out herein.

WHEREFORE, premises considered, plaintiffs R. F. Borden and Leroy R. Borden, respectfully pray that they have and recover full injunctive relief herein, temporary restraining order, temporary injunction pendente lite, and permanent injunction, against defendants above named, and each of them, their agents, associates, representatives, privies and coharts, and the class of persons similarly situated of which said defendants are representative, and their successors and sympathizers and any and all persons and entities acting for and in their behalf either primarily or secondarily, restraining, enjoining and prohibiting said defendants and persons from engaging in and encouraging in and from doing and performing any, each and all of the wrongful acts and course of conduct set out herein; and that because of the emergency which exists, and because of imminent danger and hazard of great and irreparable injury, damage, loss and harm to plaintiffs, that the Court make, enter and issue a temporary injunction pendente lite, followed by a permanent injunction, permanently restraining, enjoining and prohibiting said defendants above named and said other persons and entities from engaging in and encouraging and from doing and performing any, each and all of the wrongful acts and courses of conduct set out therein.

Plaintiffs further respectfully pray that such other and further relief to which they may show themselves entitled in the premises, including recovery against said defendants above named, their associates, agents, representatives, privies, cohorts, and the class of persons similarly situated of which defendants are representatives, and their successors, acting either primarily or secondarily, of the costs of this action.

BLACKSTOCK and HARSH

By________________________________
LeRoy Blackstock

____
R. James Harsh

VERIFICATION

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA   )

Leroy R. Borden, of lawful age, being first duly sworn, deposes and states:

That he is the petitioner above named; that he has read the above and foregoing Petition, knows and understands the contents thereof, and that the matters and statements of fact therein contained are true and correct to the best of his knowledge and belief.

____
Leroy R. Borden

Subscribed and sworn to before me this _______ day of April, 1964.

____
Notary Public

My commission expires:

____ ________ _________

MSS SEDFRE
546

BRADLEY, SYLVESTER VS. GINSBERG, MITCHELL, I. NEW YORK 1967-1968

Box 34
Folder 26

State Historical Society of Wisconsin

Please Retain Original Order

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

67 CIVIL ACTION FILE NO. 3047

SYNESTER BRADLEY, 1492 Longfellow Avenue, Bronx, New York, individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

~~Plaintiff~~

v.

MITCHELL I. GINSBERG, individually and as Commr. of the Dept. of Social Services, City of N.Y.; GEORGE K. WYMAN, individually & as Commr. of the Dept. of Social Welfare of the State of N.Y.; and PAUL HECHT, INDIVIDUALLY AND AS special investig-ator for the Bureau of Public Assistance of the Dept. of Spcial Svces., City of N.Y.,

Defendants

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

Carl Rachlin, David Gilman, Stephen M. Nagler and John Silverberg

plaintiff's attorneys, whose address is

Rm. 1030
150 Nassau Street
New York, New York 10038

an answer to the complaint which is herewith served upon you, within days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date:

[Seal of Court]

Lasdach

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

67 CIV 3047

SYNESTER BRADLEY, 1492 Longfellow
Avenue, Bronx, New York, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MITCHELL I. GINSBERG, individually
and as Commissioner of the Department
of Social Services of the City of
New York; GEORGE K. WYMAN, individually
and as Commissioner of the State of
New York Department of Social Welfare;
and PAUL HECHT, individually and as
Special Investigator for the Bureau of
Public Assistance of the Department of
Social Services of the City of New York,

Defendants.

COMPLAINT

(for declaratory judgment and injunctive relief)

1. This is an action for injunctive and declaratory relief authorized by 42 U.S.C. §1983 to secure rights, privileges and immunities established by the Fourteenth Amendment to the Constitution of the United States and by Titles IV and XVI of the Social Security Act, 42 U.S.C. §601 et seq. and 1381 et seq., and regulations promulgated thereunder. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1343 and 2201 of the United States Code.

2. Plaintiff SYNESTER BRADLEY is an adult citizen of the United States, residing in New York State, and is and was at all times herein relevant the mother of a needy child receiv-

ing assistance under New York State's program of Aid to Dependent Children (hereinafter referred to as ADC), a program promulgated, administered, supervised and executed by defendants under color of laws, statutes, ordinances, regulations, customs and usages of or pertaining to the State of New York.

3. Plaintiff brings this action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of herself and all other residents of the City of New York who receive aid under a program of public assistance established by and operated pursuant to the Social Welfare Law of the State of New York, including New York's program of Aid to Dependent Children, Aid to the Aged, Blind, or Disabled, Home Relief, and Veterans Assistance. All such persons are similarly affected by the policies and practices challenged herein in that they are subject to and threatened by invasions of their privacy and unlawful entry into and search of their homes. The class is so numerous as to make joinder of all its members impracticable. There are questions of law and fact common to the class. The claims of the named Plaintiff are typical of the claims of the class. The named Plaintiff will fairly and adequately protect the interests of the class.

4. Defendant MITCHELL GINSBERG is Commissioner of the Department of Social Services of the City of New York. He is responsible under §§ 56, 61, 62, 76, and 77 of the Social Welfare Law of the State of New York for administration of state programs of public assistance within the City of New York.

5. Defendant GEORGE WYMAN is Commissioner of the New York State Department of Social Services. Pursuant to §§ 11, 20, 34, he is chief executive and administrative offi

Department and has general responsibility for the conduct of all local welfare officials.

6. Defendant PAUL HECHT is a Special Investigator in the employ of Defendant GINSBERG, who personally executed the policies and engaged in the practices specifically complained of by the Plaintiff.

7. The Defendants have authorized, engaged in, and permitted the following policies and practices, all of which deprive Plaintiff and those persons similarly situated of rights, privileges and immunities secured by the Constitution of the United States, to wit:

(a) Defendants have authorized, perpetuated, and ratified acts which are patently prohibited by the Constitution. They have coerced entry by means of threats to terminate Welfare benefit payments into Plaintiff's home by means of their agent, PAUL HECHT, and others unknown. They have searched her home with no reason or search warrant by means of their agent, PAUL HECHT, and others unknown. They have interrogated her about private matters by means of their agent and others unknown.

(b) As a result of this coerced entry, Plaintiff has suffered not only a deprivation of her constitutional rights, but also severe emotional harm and humiliation. Moreover, Plaintiff and all others similarly situated fear a repetition of such a humiliating invasion of privacy and constitutional rights.

8. Pursuant to the policies and practices described above in the preceding paragraph a special investigator, PAUL HECHT, previously unknown to the Plaintiff, came on Thursday,

April 27, 1967, to the residence of SYNESTER BRADLEY and threatened that, if he were not permitted to enter the premises, the Plaintiff's public assistance would be terminated. Intimidated by this overt threat and by the implicit threat posed by the presence of a special investigator at her door in the early morning, the Plaintiff allowed the defendant PAUL HECHT to enter her apartment, whereupon he engaged in a protracted search of her home and personal effects without her consent. He then proceeded to interrogate her at length concerning her sexual activities, her personal life, friends, guests and acquaintances, and financial status. At all times during this search and interrogation, Defendant PAUL HECHT was in effective control of the Plaintiff's home.

9. Plaintiff did not actively opposed the aforesaid acts, demands, and intrusions of defendants, but have submitted to Defendants' assertion of authority because of fear created in Plaintiffs by Defendants that any other course would result in termination of Plaintiffs' benefits received under the A.DC program of New York.

10. Plaintiff is informed and believes, and therefore, avers, that the conduct of defendants perpetrated upon Plaintiff is in like manner perpetrated as part of a course, pattern, custom and policy of action upon members of the class hereinbefore described, of which Plaintiff is a member. (See the two letters hereto attached as exhibits A and B, the former being a letter of complaint to the Defendants against the conduct perpetrated against the Plaintiff the latter a reply from

a part of a regular pattern of their activity.

11. Plaintiff has exhausted her administrative remedies in this matter. (See the two letters hereto attached as Exhibits C and D.) Defendants threaten to continue and are continuing the conduct herein complained of, and Plaintiff and others similarly situated suffer, and will continue to suffer, irreparable injury for which there is no adequate remedy at law, unless this court declares the rights of Plaintiff and those similarly situated, and enjoins the unlawful conduct of defendants.

12. Defendant HECHT's conduct and Defendant GINSBERG's policy violate requirements of Titles IV and XVI of the Social Security Act, 42 U.S.C. §601 et seq., and 1381 et seq. as interpreted in regulations promulgated by the United States Department of Health, Education, and Welfare and binding on the Defendants as officials administering federally-aided programs of Aid to Dependent Children and Aid to the Aged, Blind or Disabled. (See § 2220(1) and 2230(1) of Part IV of the Department of Health, Education & Welfare's Handbook of Public Assistance Administration, (reproduced in Exhibit E).

13. Plaintiff, as a result of these threats and invasion of rights and privacy, feels insecure, harmed, and frightened in direct contradiction to the express purposes of the Federal Welfare Law 42 U.S.C. 601 with which the State law and administration particularly must conform, as is acknowledged by New York Social Welfare Law, §350, and the express purposes in New York Social Welfare Law, particularly Section 344(2)and 350 (1)(a).

14. Defendants threaten to continue the conduct herein complained of, and Plaintiff suffers and will continue to suffer, and will continue to fear the suffering of irreparable injury for which there is no adequate remedy at law, unless this Court declares the rights of Plaintiff and those similarly situated, and enjoins the unlawful conduct of defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays on behalf of herself and all those similarly situated that this Honorable Court:

1. Advance the cause on the docket, ordering a speedy hearing of this action according to law.

2. Enter a preliminary injunction ordering the Defendants to cease the conduct herein described pending the determination of this cause.

3. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure:

(a) Declaring that the policies and practices complained of herein deprive the Plaintiff and others similarly situated of rights, privileges, and immunities secured by the first, third, fourth, fifth, sixth, ninth, and fourteenth Amendments of the Constitution of the United States and by Titles IV and XVI of the Social Security Act, 42 U.S.C. §601 et seq. and §1381 et seq., as interpreted in the (Federal) Handbook of Public Assistance Administration, Pt. IV, §§2220(1) and 2230(1);

(b) Declaring that Special Investigators or other employees or officials of the New York City Department of Social Services acting in said capacity may not:

(1) discontinue, or reduce financial assistance, or otherwise interfere with the receipt of such assistance, because of a recipient's refusal to consent to entry into his or her home without a valid search warrant;

(2) threaten, explicitly or implicitly, to take such action because of such a refusal; or

(3) enter the home of a recipient of public assistance except under a valid search warrant or on the basis of the consent of the recipient freely-given after the Special Investigator or other employee or official has clearly stated to the recipient that none of the afore-mentioned actions can be taken because of a refusal to consent.

(c) Declaring that no employee, agent, or official of the New York City Department of Social Services may enter and search any rooms within the home of a recipient of public assistance or touch and examine any objects therein except under a valid search warrant or on the basis of a consent freely given after a clear statement of the recipient's right to withhold consent without suffering loss or diminuation of benefits.

(d) Declaring that no employee, agent, or official of the New York City Department of Social Services may interrogate or question an applicant for or recipient of public assistance regarding sexual activities and other personal activities not demonstrably relevant to eligibility for public assistance or the proper amount of a grant of public assistance;

(e) Declaring that no Special Investigator of the New York City Department of Public Services and no other employee, agent, or official of that Department engaged in investigation into alleged crimes of a recipient of public assistance may interrogate or question that recipient without first advising the recipient of his or her right to have counsel present and of his or her privilege against self-incrimination.

4. Enter a permanent injunction restraining the Defendants, their successors in office, agents, and employees from:

(a) Entering into the dwelling places of Plaintiff and others similarly situated, without obtaining a valid Search Warrant issued upon probable cause or on the basis of consent of the recipient freely given after the Special Investigator or other employee or official has clearly stated to the recipient that failure to give such consent will not result in discontinuance or reduction of financial assistance, or criminal prosecution.

(b) Interrogating or questioning an applicant for or recipient of public assistance regarding sexual activity and other personal activities not demonstrably relevant to issues of eligibility.

5. Allow Plaintiff her costs herein, and grant her and all others similarly situated such additional or alternative relief as the Court may deem equitable, just and appropriate.

PLAINTIFF FURTHER PRAYS that this Court award $10,000 damages for pain and suffering against PAUL HECHT, individually.

David Gilman

DAVID GILMAN

160 West 96th Street
New York, N. Y. 10025

John E. Silverberg

Stephen M. Nagler

CARL RACHLIN

By STEPHEN NAGLER
JOHN E. SILVERBERG
150 Nassau Street
New York, N. Y.

Attorneys for the Plaintiffs

Of Counsel:

EDWARD V. SPARER

JONATHAN WEISS

BRIAN GLICK

401 West 117th Street
New York, N. Y. 10027

VERIFICATION

I, SYNESTER BRADLEY, being first duly sworn, depose and say that I am one of the Plaintiffs in the within action; that I have read the foregoing complaint and know the contents thereof; that the same is true to my knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

Synester Bradley
SYNESTER BRADLEY

Subscribed and sworn to before me this 8th day of August, 1967.

DAVID GITMAN
Notary Public, State of New York
31-6522035
Qualified in New York County
Commission Expires March 30, 1968

Notary Public, N. Y.

EXHIBIT A

THE LEGAL AID SOCIETY
290 LENOX AVENUE
NEW YORK, N. Y. 10027

HQ 5244

May 25, 1967

Commissioner Mitchell I. Ginsberg
New York City Department of Welfare
250 Church Street
New York, New York

RE: Mrs. Synester Bradley
1492 Longfellow Avenue
Bronx, New York 10460

Dear Commissioner Ginsberg:

We were contacted by Mr. Felder concerning the above matter. On May 25, 1967, we had a conference with Mr. Felder in which we attempted to clarify the issues and come to an understanding in regards to our letter to you of May 5, 1967. I think the discussion was profitable insofar as we clarified the issues. It is our contention that the issue is not whether the Department of Welfare has a right to conduct an eligibility investigation, but what procedures the special investigator must follow in conducting himself. The issue of illegal search and the procedures that special investigators must follow goes far beyond the Bradley matter. In order to protect all welfare recipients from abusive procedures, specific regulations must be devised.

We suggested to Mr. Felder that the Department issue specific regulations regarding the conduct of special investigators while participating in eligibility investigations. Specifically that a client should be given prior notice that a special investigator will be visiting her. Also that the investigator must receive the consent of the client before entering the home and that this consent should not be elicited through the threat of discontinuance of aid. That once the investigator has gained entrance the verification of eligibility should be based solely upon discussion had with the client and

COPY

EXHIBIT A

that no attempt should be made to search the home without the explicit prior consent of the client.

We suggest that these and other regulations be issued clearly designating guide lines that special investigators should follow when making their investigations. The above is only meant to be a suggestion and we offer our cooperation in this matter.

The Bradley case is still pending. We have had no written response and our client is pressing for an early determination. May we please have a reply at your earliest convenience.

Very truly yours,

THE LEGAL AID SOCIETY

David Gilman

DG:jd
CC: Mr. Samuel Felder
Director Division of Legal Service
250 Church Street
New York, New York

EXHIBIT B

W-1

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
250 CHURCH STREET
NEW YORK, N. Y. 10013
TELEPHONE 344-8700

MITCHELL I. GINSBERG
COMMISSIONER

June 14, 1967

David Gilman, Esq.
Legal Aid Society
290 Lenox Avenue
New York, N. Y.

Re: Mrs. Synester Bradley
1492 Longfellow Avenue
Bronx, New York 10460

Dear Mr. Gilman:

This is with reference to your letters of May 3 and May 25, 1967, concerning a visit by Mr. Paul Hecht, of our Bureau of Public Assistance, to the home of Mrs. Synester Bradley. You characterized his visit as a search of Mrs. Bradley's home and suggest that this was in violation of her constitutional rights since it was allegedly made for the purpose of gathering evidence for a criminal prosecution.

We had an investigation made of the incident and I am satisfied that Mr. Hecht's entry into Mrs. Bradley's apartment was proper. He presented his credentials to Mrs. Bradley and informed her that he was sent by our Central Office. When Mrs. Bradley stated that she would not permit him to enter, he informed her that this was her privilege and stated that if he, as a duly authorized Department representative, is not permitted to visit and interview her it would be necessary for him to recommend suspension of her case until the matters he wished to discuss were clarified. She then permitted him to enter.

I am informed that in a recent discussion with Mr. Samuel Felder, Director of our Division of Legal Services, you took the position that this statement by Mr. Hecht constituted an entry by threat and intimidation. I do not agree with you. Mr. Hecht's statement was proper. It was necessary for him to inform Mrs. Bradley of the consequence of her refusal to permit a duly authorized representative of the Department to visit and interview her.

With respect to the discussion regarding a man in the home, and Mrs. Bradley's sexual activities, it was she who introduced these subjects and Mr. Hecht who attempted to limit the interview to the eligibility factors involved in the case. Mrs. Bradley, however, insisted on returning to these matters and it was only after some difficulty that Mr. Hecht was able to discuss the absence from the City of Mrs. Bradley's child and to offer to assist her in

EXHIBIT B .

obtaining employment.

Your understanding that it is not the policy of this Department to make searches of recipient's homes is correct. Particularly with respect to Mr. Hecht's visit to Mrs. Bradley, I found the manner of his entry into her apartment and the interview conducted by him to have been proper.

I have considered the suggestions you make in your letter of May 25th for the issuance of guide lines to be followed by staff workers in making their investigations. As it happens we are preparing material for the staff providing guide lines in investigation and reinvestigation of eligibility. These will implement amendments to the Social Welfare Law effected by Chapter 183 of the Laws of 1967, and regulations recently issued by the State Department of Social Welfare (Bulletin 91b) pursuant to the amendments. These amendments were enacted in order to conform with requirements prescribed by the Federal Department of Health, Education and Welfare, applicable in all States, with respect to the action to be taken and the manner of making investigations or reinvestigations of eligibility for public assistance.

The guide lines will cover your suggestions and other matters as well. However, they do not provide a requirement for advance notice of visits by special investigators. This is not required under the law, or the State regulations. However, I am considering this issue at the present time, and will be in touch with you again.

With respect to Mrs. Bradley's reapplication for public assistance, on May 23rd, the application has been accepted, for supplementation of her income from employment. She should be receiving her first check shortly.

Very truly yours,

Mitchell I. Ginsberg

Mitchell I. Ginsberg
Commissioner of Welfare

C

EXHIBIT C

June 1, 1967

Hon. Joseph Louchheim, Deputy Commissioner
New York State Department of Social Welfare
270 Broadway
New York, New York 10007

Re: Synestor Bradley-ADC 2446654
1492 Longfellow Avenue
Bronx, New York, 10460

Dear Commissioner Louchheim:

On behalf of the above named client we demand a fair hearing. The issues which we propose to raise at the hearing are as follows:

1. Wrongful closing of the client's case.
2. Conduct of an unlawful search by the local agency for the purpose of securing evidence against the client, in violation of her rights under the 4th amendment to the Constitution of the United States. We regard this as a separate issue to be raised at the hearing.
3. Failure of the agency to meet the actual needs of the client in so far as the costs of gas and electricity are concerned.
4. Failure of the local agency to provide certain furniture needed by the client.

We contend that the closing or suspension of a public assistance case without prior fair hearing is a violation of the client's right to due process. Accordingly we demand that assistance be extended to the client pending a fair hearing, consisent with her needs. Unless we hear from you accordingly it will be necessary to seek a judicial remedy.

Very truly yours,
Carl Rachlin by

Stephen M. Nagler

CR/SMN:n
CC: Comm. Ginsberg

EXHIBIT D

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
NEW YORK CITY OFFICE

PLEASE SEND NEW YORK CITY
CORRESPONDENCE TO:
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER
270 BROADWAY
NEW YORK, N. Y. 10007
TELEPHONE BARCLAY 7-1616

GEORGE K. WYMAN
COMMISSIONER
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER

July 28, 1967

Scholarship, Education and
Defense Fund For Racial
Equality
150 Nassau Street
New York, New York

Re: BRADLEY, Mrs. Symester
1492 Longfellow Avenue
Bronx, New York
ADC 2446654

Att: Mr. Stephen M. Nagler

Dear Mr. Nagler:

We are replying to your letter of 6/1/67 in which you requested a Fair Hearing in behalf of Mrs. Bradley.

We have received a report from the Department of Social Services in which they advise us that Mrs. Bradley's case was reopened on 6/15/67 as her employment was terminated.

We are further advised that Mrs. Bradley has consistently refused to permit her caseworker to visit her to evaluate her need for household furnishing stating that it is "not worth a home visit". She had mentioned a need for a bureau or a chest of drawers although agency records indicate that a grant of $20 was issued for a chest of drawers.

We are advised that at the time of the current application Mrs. Bradley had no bill for utility arrears and the only outstanding bill was for the period 3/7 - 5/4/67 in the amount of $13.98 accumulated during a period she was in receipt of full assistance. In addition, the City Department of Social Services advised that Mrs. Bradley had concealed income from employment and therefore would have had funds available to meet this bill.

No request for payment of this bill was made by Mrs. Bradley when she reapplied on 7/11/67.

We have asked the Department of Social Services for further clarification of their basis for closing this case on 5/9/67 as it appeared from our

EXHIBIT D

Scholarship, Education and
Defense Fund For Racial
Equality

Att: Mr. Stephen M. Nagler

review of the case record that she had a budget deficit. We will write to you again when we have clarified this further.

The issue you raise about an "unlawful search" of client's apartment is not a basis for a Fair Hearing. The New York City Department of Social Services does have a responsibility to make an investigation into a case where an ineligibility complaint has been made. Such investigation should be made with decorum and with due respect for the client's dignity and self-esteem.

We hope the above satisfactorily answers the issues you raised in your letter of 6/1/67. If we do not hear from you by 8/11/67, we will assume that you have accepted the agency's decisions and do not wish to continue with your request for a Fair Hearing.

Very truly yours,

Harry H. Brown

Harry H. Brown
Sr. Welfare Representative

EXHIBIT E

FEDERAL HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION, PART IV

2220. Requirements for State Plans.
Effective July 1, 1967, a State plan under titles I, IX, XIV, and XVI must:

1. Include policies and procedures for determination of eligibility for assistance or other services that are consistent with the objectives of the program, and that respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964 (see Supplement C) and all other relevant provisions of Federal and State laws, and that will not result in practices that violate the individual's privacy or personal dignity, or harass him, or violate his constitutional rights.

2230 Interpretation of Requirements
The following explains the import of the corresponding items in 10-2220

1. The prohibition against a State plan containing policies and procedures for determination of eligibility that will result in violation of privacy or personal diginity, that constitute harassment, or that violate constitutional rights, requires careful and continuing attention to practices and procedures that may result in violations of these rights and principles. By way of illustration, States must especially guard against violations in such areas as entering a home by force, or without permission, or under false pretenses, making home visits outside of working hours, and particularly making such visits during sleeping hours;and searching in the home, for example, in rooms, closets, drawers, or papers, to seek clues to possible deception.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

X

SYNESTER BRADLEY, 1492 Longfellow
Avenue, Bronx, New York, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MITCHELL I. GINSBERG, individually
and as Commissioner of the Department
of Social Services of the City of
New York;GEORGE K. WYMAN, individually
and as Commissioner of the State of
New York Department of Social Welfare;
and PAUL HECHT, individually and as
Special Investigator for the Bureau of
Public Assistance of the Department of
Social Services of the City of New York,

Defendants.

X

ORDER TO SHOW CAUSE

Upon the complaint filed herein in the office of the clerk of this court and the annexed affidavit of Synester Bradley, verified the 8th day of August, 1967,

Let the defendants, and each of them, show cause before this court, at a stated term thereof, to be held for the hearing of motions, in the federal courthouse in the U.S. Courthouse, in the County and city of New York, state of N.Y., on the day of , 1967, at 10:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why an order should not be made and entered in the above-entitled action which shall enjoin defendants from engaging in the practices of pursuing the policies described in the complaint.

Let service of this rule nisi, together with copy of the complaint on such of the defendan sufficient.

Dated at the day of August, 1967.

United States District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---X

SYNESTER BRADLEY, 1492 Longfellow Avenue,
Bronx, New York, individually and on behalf
of all others similarly situated,

Plaintiffs,

-against-

MITCHELL I. GINSBERG, individually and as
Commissioner of the Department of Social
Services of the City of New York; GEORGE
K. WYMAN, individually and as Commissioner
of the Department of Social Welfare of the
State of New York; and PAUL HECHT, individually
and as Special Investigator for the Bureau of
Public Assistance of the Department of Social Services
of the City of New York,

Defendants.

---X

A F F I D A V I T

State of New York) ss.;
County of New York)

STEPHEN M. NAGLER, Esq., being duly sworn deposes and says:

1. I am an attorney admitted to practice in the State of New York.

2. I am familiar with the facts herein having interviewed Synester Bradley, the named plaintiff, discussed the subject of the within action with officials of the City and State Departments of Social Services, and assisted in the drawing of the within complaint.

3. On April 27, 1967, on information and belief, plaintiff Synester Bradley was subjected to a special investigation conducted by the defendant Hecht. Such search was consistent with the policies and procedures engaged in and promulgated by the other defendants herein. The practice of gaining entry by threat of suspension of public assistance is condoned by the defendant Ginsberg, as indicated by his letter of June 14, 1967

annexed to the complaint herein as Exhibit"B." In fact for some time subsequent to the investigation, the public assistance benefits of Synester Bradley were actually suspended and Synester Bradley was compelled to live under unusual hardship. Moreover Synester Bradley was and, on information and belief, is threatened with prosecution for fraud pursuant to Section 145 of the Social Welfare Law of the State of New York on the basis of alleged evidence supposedly procured as a result of said illegal search.

4. On information and belief, such illegal searches of the homes and property of welfare recipients continue on a regular basis as evidenced by the letter of the defendant Ginsberg alluded to previously. Such searches are based on on entries secured by threat, and, on information and belief, result in the termination of welfare benefits to many persons, causing great hardship and indeed threatening their very survival. Furthermore, no rapid administrative remedy is available to persons whose assistance is suspended, even for such cause as a refusal to permit an unlawful search.

5. The abridgement of plaintiffs' constitutional rights, resulting in the suspension of public assistance benefits and leaving many so injured without any available resource whatsoever, merits immediate relief and renders the continuance of such deprivations unconscionable. The irreparability of the injury possibly resulting from such threatened searches, further merits immediate relief, AND CONSTITUTES THE BASIS FOR BRINGING THIS MATTER ON BY ORDER TO SHOW CAUSE RATHER THAN NOTICE OF MOTION.

6. No previous application for the relief requested herein has been made to any court or judge.

WHEREFORE, deponent respectfully requests that the defendants be ordered to show cause on Friday, August 11th, 1967 why the relief requested in the complaint should not be granted, or in the alternative, that a temporary restraining order issue restraining the defendants from:

1. Conducting or attempting to conduct any investigation interrogation, search or other surveillance of the homes, persons, personal effects, property, associates of, or business or personal affairs of the plaintiff or others similarly situated without a valid consent or a legal warrant.

2. Coercing or attempting to coerce plaintiff or others similarly situated by threat or promise, to allow the entry of defendants or any of their agents, into the residences of plaintiff or others similarly situated for the purpose of conducting or attempting to conduct any search, investigation, imterrogation or other surveillance of plaintiff or others similarly situated.

3. Conducting or attempting to conduct any search, investigation, interrogation, or other surveillance of the homes, persons, personal effects, property, associates, or business or personal affairs of plaintiff or others similarly situated without informing the plaintiff and others of their constitutional right to refuse entry, to remain silent, and to be represented by counsel during any interrogation.

4. Using or attempting to use as the basis of any criminal or civil action against plaintiff or others similarly situated or as the basis of any termination, suspension or reduction of public assistance to plaintiff or others similarly situated any reports, evidence or other information deriving from any attempted or contemplated search, investigation, interrogation, or other surveillance of the homes, persons, personal effects, property, associated, or business or personal affairs of plaintiff

or others similarly situated regardless of whether such searches, investigations, interrogations, or other surveillance have been conducted in th past, are being conducted or will be conducted in the future.

Stephen M Nagler
Stephen M. Nagler

Sworn to before me this
10th day of August, 1967

LOUIS D. SCHWARTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NEW YORK COUNTY
No. 31-3554800
COMMISSION EXPIRES MARCH 30, 1969

JCB

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

---x

In the Matter of the Appeal of :

SYNESTER BRADLEY : Case No. 7446656

from a Determination by the New York :
City Department of Social Services
Affecting the Adequacy of a Grant of :
Aid to Dependent Children
:

---x

270 Broadway
New York, New York

November 2, 1967
10:00 a.m.

Before:

VICTOR ZUCKERMAN, ESQ.,
Referee

Pauline G. Winslow,
Hearing Reporter

* * *

DOYLE REPORTING, INC.
CERTIFIED STENOTYPE REPORTERS
132 NASSAU STREET
NEW YORK, N. Y. 10038

TELEPHONE BARCLAY 7-6441

Appearances:

For the Appellant:

STEPHEN M. NAGLER, ESQ., Attorney

For the New York City Department of Social Services:

DENNIS O'CONNOR, ESQ., Attorney

ALBERT BUREMS, Supervisor II

RICHARD MAHON, Supervisor I

JOSEPHINE DEMAREST, Supervisor II

* * *

THE REFEREE: My name is Victor Zuckerman, and I have been designated by the Commissioner of Social Services to conduct the hearing in this case.

Pursuant to the Social Services Law a recipient or applicant for aid to dependent children has an opportunity to question an action by the City. Mrs. Bradley has asked for the fair hearing, and this is a fair hearing for Mrs. Bradley.

In accordance with the law a decision will be issued by the Commissioner based on the record of what transpires at this hearing. All sides will be notified of the decision.

I will start by having --

MR. NAGLER: Might I briefly ask whether the decision will be forthcoming within 30 days of the date of this hearing, and we would so request?

THE REFEREE: We will note your request.

Mr. Nagler, will you tell us what the issue is here, please?

MR. NAGLER: First, wrongful closing of the client's case for a period during the late spring, early summer, resulting in financial loss to the client.

Second, an issue we propose to raise, that we have been informed by the Commissioner -- by the Family Services officer that we will not be allowed to raise at this hearing, but I will propose to raise it, in regard to conduct of an unlawful search --

MR. O'CONNOR: I move to strike.

THE REFEREE: I would appreciate if we didn't have any interruption while he is speaking.

MR. NAGLER: Conduct of an unlawful search by the local agency for the purpose of securing evidence against the client, in violation of her rights under the Fourth Amendment of the Constitution of the United States.

MR. O'CONNOR: I move to strike.

THE REFEREE: I am not going to physically strike it out, but I will not permit a hearing --

MR. NAGLER: We have an exception based on the fact of -- the Department of Health, Education, and Welfare of the United States, we may challenge -- the client may challenge at a fair hearing any policy decision of the Commissioner of the local or State agency.

THE REFEREE: I will note your exception, Mr. Nagler.

MR. NAGLER: Our next issue is failure of the Agency to meet the actual needs of the client so far as the cost of gas and electricity are concerned and a loss to the client resulting therefrom.

And last, but not least, failure of the local agency to provide certain furniture needed by the client.

THE REFEREE: Mr. Burems, are these the issues as you understand them in this case?

MR. BUREMS: Yes, they are.

THE REFEREE: Why don't you start, Mr. Nagler.

MR. NAGLER: May I ask a question off the record first?

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: On the record.

Let's do this issue by issue. With reference to your claim of a wrongful closing of this case, will you tell us what your claim is?

MR. NAGLER: The case was closed for some reasons not adequately stated to the client and not stated prior to the closing, nor was it reported to the client.

THE REFEREE: When was it closed?

MR. NAGLER: The exact date?

THE REFEREE: Roughly.

MR. NAGLER: The exact date was within the knowledge of the Agency and not ourselves. There is an official closing date which they never bothered to tell us about.

THE REFEREE: In July, you said?

MR. NAGLER: June.

THE REFEREE: Go ahead. How long was this case closed?

MR. NAGLER: Might I suggest that it would be more expeditious to elicit this from the case record.

THE REFEREE: Your client might know.

How long was it closed?

MRS. BRADLEY: In May.

MR. BUREMS: I can give you the specific information.

THE REFEREE: Mr. Burems, will you tell us what the City did with reference to the closing of this case, when and why?

MR. BUREMS: The case was closed as of May 9, 1967, because at that time Mrs. Bradley was employed, and her budgetary needs were covered. This situation resulted from the absence of the dependent child who had been included in the budget also, having been sent to West Virginia, and the Department had not been notified of either of these developments.

THE REFEREE: As a result of this you closed the case?

MR. BUREMS: As a result of this the case was closed.

THE REFEREE: How long was it closed?

MR. BUREMS: It was closed until June the 15th.

THE REFEREE: It was reopened on June 15th?

MR. BUREMS: Reopened June 15th.

THE REFEREE: In May, before it was closed, and when you reopened it in June, what was her recurring grant?

MR. BUREMS: At the time the case was closed her recurrent grant was $86.90 semimonthly.

THE REFEREE: And was this the same grant which was given to her when it was reopened?

MR. BUREMS: No.

THE REFEREE: When it was reopened, what was the amount of the grant?

MR. BUREMS: $16.70. That was the initial grant, and subsequently --

THE REFEREE: Was that changed?

MR. BUREMS: Yes. As of 6/16/67 the budget was changed to $85.15, and that continues to be the amount that she is receiving at this time, from June 15th to date.

THE REFEREE: That is issue No. 1.

MR. NAGLER: May I have those dates again, Mr. Burems?

THE REFEREE: I have them here.

Off the record.

(Discussion off the record.)

MR. BUREMS: May I say, sir, that the 16.70 that we gave --

THE REFEREE: Was that an initial emergency grant?

MR. BUREMS: No; the budget deficit at the period because she was employed at the time, earning $40 a week.

THE REFEREE: For what period?

MR. BUREMS: I think she stopped working about the 15th of -- I am not certain. Maybe Mr. Mahon could help me with the date.

THE REFEREE: Mr. Mahon, the $16.70, do you know what that was for?

MR. MAHON: That was the budget computed with her employment, and we were planning to reopen the case on that date.

THE REFEREE: She was working at that time when you reopened?

MR. MAHON: But she was subsequently unemployed, so that's when we opened it with a full budget.

THE REFEREE: I think it might be simpler if we conducted this hearing disposing of one issue at a time.

This is the City's position on the wrongful cutting off. Now --

MR. NAGLER: May I cross-examine?

THE REFEREE: Yes.

MR. O'CONNOR: Before he cross-examines, I would like to know if he is finished with his direct case on this issue.

THE REFEREE: No. We have started off with the City presenting its case, telling us what they did and why. Now he will have an opportunity to question and present his case. You will have a rebuttal chance on this issue.

MR. O'CONNOR: 127 of the bulletin issued by the Commissioner of the State Department of Social Services provides that the appellant shall go first.

THE REFEREE: At my discretion, I am revising it.

MR. O'CONNOR: I take exception to that.

THE REFEREE: Fine.

Mr. Nagler, would you want to ask questions of the City?

MR. NAGLER: Yes, I do.

Mr. Burems, how was the determination arrived at that the child was not in the home?

MR. BUREMS: Through the admission of the client.

MR. NAGLER: To whom?

MR. BUREMS: Mrs. Bradley was visited on 4/27/67, at which time she admitted to Mr. Hecht of our Special Unit that the child was in West Virginia.

MR. NAGLER: Your Special Unit? He was not a regular case worker?

MR. BUREMS: He is a case worker that is assigned to a Special Unit.

THE REFEREE: Mr. Nagler, is there any question that the child was not in the house or was in the home? Is that in dispute?

MR. NAGLER: There is a preliminary dispute as to the manner in which the information was obtained.

MR. O'CONNOR: I object.

THE REFEREE: I am not going to permit any discussion on that. That is not in issue here.

MR. NAGLER: The Agency has made a statement that the child was not in the home as of a certain date.

THE REFEREE: That's their statement. I know what you are going to say. If Mrs. Bradley wants to state the child was in the home, fine; we will determine whether it was or it wasn't, but I don't think there is any issue as to whether or not the child was. If there is, you can elicit testimony as to what actually happened.

MR. NAGLER: I may choose, during the course of this hearing, to elicit no testimony on this point from the client to simply show that any showing of the Agency to the effect that the child was not in the home as of the 27th of April 1967 was based on an unlawful search --

THE REFEREE: I will ask Mrs. Bradley.

MR. NAGLER: -- in which case there is no evidence on this point, no lawful evidence on which the case was closed.

THE REFEREE: I will ask Mrs. Bradley whether or not the child was in the home during this period or was in West Virginia.

MR. NAGLER: I will direct Mrs. Bradley not to answer the question at this point but reserve that for a decision subsequent to our examination of the decision of the Agency.

MR. O'CONNOR: This is the reason why I ask that the requirements of 127(a) be followed. Mr. Nagler is involved in a fishing expedition for matters in the direct knowledge of his client.

THE REFEREE: I don't want discussion on this.

Do you want to continue the case now on how they found out whether or not the child was home?

MR. NAGLER: Will the Agency stipulate just to show I am not engaging in a fishing expedition? I am offering proof that the Agency obtained this information --

THE REFEREE: We note your contention --

MR. NAGLER: The Agency --

THE REFEREE: -- that the evidence was illegally obtained.

MR. NAGLER: And on the basis of the violation of the client's rights and privacy.

THE REFEREE: The record will indicate that you have made this point very clear.

MR. NAGLER: The offer of proof must specify how it was illegally obtained -- that is, by a special investigation conducted by Mr. Hecht, who gained entry to the home by threat.

THE REFEREE: Do you want to continue on the next question?

MR. NAGLER: Now, you state that from the source of Mr. Hecht you made a decision the child was not in the home. On what date did you determine the child was not in the home?

MR. BUREMS: The date the client gave us the information.

MR. NAGLER: In other words, you are saying that Mr. Hecht determine the child had left the home on 4/27/67?

MR. BUREMS: No; that's not what she told us. She told us the child left the home on 3/26.

MR. NAGLER: You see now, again, Mr. Zuckerman, this is all evidence which should not be in the record from the standpoint it was illegally obtained.

THE REFEREE: I will note your objection to the admission or admissibility of all of the evidence pertaining to information elicited by Mr. Hecht. Is that what you are saying?

MR. NAGLER: Correct.

THE REFEREE: I will note your objection.

Continue.

MR. NAGLER: And this, therefore, is nothing more than a discovery procedure.

THE REFEREE: Do you have a copy of Mr. Hecht's report of his investigation?

MR. O'CONNOR: Objection to that. I see no need. The City has stated their position. Let Mr. Nagler come forward with his offer of proof that the child was in the home.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: May I see Mr. Hecht's report, please?

MR. NAGLER: May I note also for the record that a copy of the report was briefly shown to me by Mr. Samuel Felder, the Director of the Bureau of --

MR. O'CONNOR: This does not entitle Mr. Nagler to complete disclosure of the report.

THE REFEREE: I will rule that Mr. Nagler will not be given copies of Mr. Hecht's report.

MR. NAGLER: I have an exception. A demand for documents was made in this case more than ten days in advance of the hearing. It was demanded the documents be furnished to us not less than five days -- the document on which the Agency has relied in making a determination that the case was closed is an issue raised by the fair hearing letter, of which the Agency had notice long in advance of the scheduling of this hearing.

MR. O'CONNOR: I would like to point out for the record --

MR. NAGLER: Pursuant to the regulation of the Department --

MR. O'CONNOR: I have something to say.

The request for a fair hearing contains no request for documents.

MR. NAGLER: No, but a subsequent request was made.

THE REFEREE: Inasmuch as this hearing is not dealing with the alleged legality or illegality of Mr. Hecht's visit or the method of the Agency obtaining information, I make my ruling that you are not entitled at this time to this document.

MR. NAGLER: Exception.

Mr. Burems, the determination was subsequently made that the child was returned to the home?

MR. BUREMS: Yes.

MR. NAGLER: On what date was that determination made?

MR. BUREMS: Maybe Mr. Mahon could answer that question better than I.

MR. MAHON: Mrs. Bradley brought her son in with her when she came to reapply.

THE REFEREE: When?

MR. MAHON: 5/23.

THE REFEREE: Mr. Nagler?

MR. NAGLER: When she came to reapply on 5/23 she brought her son with her?

MR. MAHON: Yes.

MR. NAGLER: And you saw her son?

MR. MAHON: No; the intake interviewer did.

MR. NAGLER: And there is a record that a person employed by the Department of Social Services saw her son?

MR. MAHON: Right.

MR. NAGLER: Yet the case was not reopened until 6/15?

MR. MAHON: Right.

MR. NAGLER: Why is that?

THE REFEREE: If you know. If you don't know, don't guess.

MR. MAHON: There was a matter at that time -- if somebody applies for assistance, there's certain information we have to verify, and the reason why Mrs. Bradley's case wasn't reopened, we were unable to verify her employment at that time.

THE REFEREE: O.K.

Mr. Nagler, next question.

MR. NAGLER: You were not able to verify

employment?

MR. MAHON: Yes. At the instruction of Mr. Gilman of the Legal Aid Society, the St. Augustine Church would not give us any information. He subsequently did, and that's when the case was reopened.

MR. NAGLER: Do you have any knowledge that St. Augustine Church operated under the aegis of the Legal Aid Society?

MR. MAHON: My telephone conversation with that church -- I was told to contact Mrs. Bradley's lawyer if I wanted information about her employment.

MR. NAGLER: Do you have any personal knowledge with regard to whether or not Mr. Gilman had made such instructions?

MR. O'CONNOR: I object.

THE REFEREE: I will sustain the objection.

MR. NAGLER: I am trying simply to ascertain that this matter is entirely hearsay.

THE REFEREE: He made a statement. He said the church told him Gilman said -- that's all. Whether Gilman said it or not is not the issue.

MR. NAGLER: Now, when you subsequently reopened the case, on June 15th, and gave the client $16.70 -- is that correct?

THE REFEREE: Obviously they did. That's been brought out. I would like not to reiterate.

MR. NAGLER: When you subsequently found out what the salary of the client was, and you subsequently, therefore, found out that for the time 5/23 to 6/15, when the case was actually reopened, there was a budget deficit of how much, taking into account the salary the client was actually receiving?

THE REFEREE: Was that the $16.70?

MR. BUREMS: Yes.

MR. NAGLER: The 16.70 semimonthly?

MR. MAHON: That was semimonthly.

MR. NAGLER: So, the $16.70 was meant to cover what period?

THE REFEREE: Was that 5/23 to 6/15, or is that in advance for the next two weeks?

MR. BUREMS: From June 1st through the 15th of June.

THE REFEREE: From June 1.

Next question.

MR. DEMAREST: There is a question.

THE REFEREE: It is not clear.

MR. NAGLER: May the record note that the witness is deriving the information from the case record, and notwithstanding our demand for documents, we are not being permitted to examine the document from which the witness is testifying. He is refreshing his recollection from this document.

MR. O'CONNOR: It is quite obvious that the case worker is doing the research because of Mr. Nagler's cross-examination.

THE REFEREE: Any documents which are read, the other side will be afforded an opportunity to read that document.

MR. NAGLER: Any document which is being used to refresh the recollection of a witness?

THE REFEREE: You can look at that.

MR. O'CONNOR: The regulation is quite explicit: Whatever the Department introduces is to be given to the other side. As yet, the Department has not introduced any document.

MR. NAGLER: Nonsense.

THE REFEREE: Please, no discussion on this point.

If they are reading something, you will be able to look at it.

MR. NAGLER: I ask you again, what was the period for which the sum of $16.70 was issued and -- let me rephrase that.

Do you have an independent recollection, without looking at the case record?

MR. MAHON: No.

THE REFEREE: Is it on the case record?

MR. MAHON: I don't see any indication.

THE REFEREE: Do you want to go on to another question? They don't know. The case record doesn't indicate it.

MR. NAGLER: Are we going to have to engage in a full examination of the proper budgeted amount for this client, considering, taking into account the working mother allowance to which she was entitled for the period during which she was working?

THE REFEREE: If there is any question, we will have to.

MR. NAGLER: The F.I.C.A. --

THE REFEREE: I am not concerned with the 16.70. Obviously this is not the full semimonthly budget that she is entitled to or getting at this time.

MR. NAGLER: We are claiming that for -- at least for 5/23 to 6/15 she was entitled to a certain sum of money which she did not receive.

THE REFEREE: I think the City said they don't know what the 16.70 is for.

MR. O'CONNOR: When their cross-examination is completed, the City will confer and determine the exact amounts for the exact dates.

MR. NAGLER: I ask that the City do so now, and seeing it is eleven o'clock, and I want a recess --

(Discussion off the record.)

THE REFEREE: On the record.

We will take a little recess, and the City will please look at its record and see if it can determine what the 16.70 was for.

MR. NAGLER: What the proper budgeted amount should have been for the period 5/23 to 6/15.

I would ask the Hearing Officer to guard my confidential case record.

(Whereupon a recess was taken.)

THE REFEREE: Do you have the answer to that question as to what the 16.70 represented?

MR. BUREMS: That was an error. She did not receive 16.70. This was just a computation.

THE REFEREE: She never got 16.70?

MR. BUREMS: That's right.

THE REFEREE: So, the first check she got was $85.15?

MR. BUREMS: Yes.

THE REFEREE: When did she get that, what date?

MR. BUREMS: I am not sure of the date. It covered the period 6/16 through 6/30.

MR. NAGLER: 85.15.

On what date did you allegedly determine Mrs. Bradley left work?

MR. BUREMS: On June the 9th.

MR. NAGLER: 1967?

MR. BUREMS: Right.

MR. NAGLER: Did you give her any sum of money to cover the period June 9, 1967, to June 16, 1967?

MR. BUREMS: No, we did not because she had salary coming to her.

May I say this, Mr. Referee?

THE REFEREE: What is it?

MR. BUREMS: A point --

THE REFEREE: Why did you not give --

MR. BUREMS: She was still on salary; though she completed her job she was expecting to draw some money from her job.

THE REFEREE: Mr. Nagler?

MR. NAGLER: How much did you determine Mrs. Bradley was allegedly paid during this period?

MR. BUREMS: $40 per week.

MR. NAGLER: $40 per week before taxes, gross salary?

MR. BUREMS: Yes.

MR. MAHON: No; there were no taxes deducted. She got $40, and that was it.

MR. BUREMS: That was gross and net.

MR. NAGLER: $40 gross and net.

Have you, during this past recess, made any computation as to what budget deficit Mrs. Bradley will have for herself and the child being at home?

MR. BUREMS: Yes, we have.

THE REFEREE: For what period, or at any time?

MR. NAGLER: Based on a salary.

MR. BUREMS: Based on the salary of $40 a week, with the child in the home, the budget deficit would amount to $16.70.

MR. NAGLER: Semimonthly?

MR. BUREMS: Yes.

MR. NAGLER: That includes a working mother's allowance and various other increments?

MR. BUREMS: Yes.

MR. NAGLER: Was Mrs. Bradley in fact given the sum of $16.70 semimonthly for any period during which the child was in the home?

MR. BUREMS: No, she was not because at that point she terminated her employment.

THE REFEREE: Just answer the question.

The answer is "No."

MR. O'CONNOR: This is the very reason, Mr. Hearing Officer, I would like the appellant to put their case in first.

THE REFEREE: I know.

Go ahead, Mr. Nagler.

MR. NAGLER: Unfortunately, the appellant doesn't keep the case record.

MR. O'CONNOR: The appellant has certain facts at her command. Mr. Nagler pointed out she was not adequately notified of why she was off Welfare, and the notice of discontinuance clearly spells out why.

THE REFEREE: You will be given an opportunity; that is relevant.

MR. O'CONNOR: I would like the regulation to be followed, 127.

MR. NAGLER: You have already reiterated several times --

THE REFEREE: I don't want any more discussion.

Do you want to continue?

MR. NAGLER: When the intake worker allegedly saw Mrs. Bradley and the child in the Intake Section of the Welfare Center on June 1, 1967, did he make a determination as to when the child actually returned to the home?

MR. O'CONNOR: I object to this. I object to this question. How can he make a determination on the spot?

MR. NAGLER: Did he interview Mrs. Bradley?

THE REFEREE: Is there some indication there as to when the child returned home, when the intake worker got this information from Mrs. Bradley or in some other manner?

MR. O'CONNOR: I object again. This is within the knowledge of the client, when the child came home.

THE REFEREE: Overruled.

Is there an indication?

MR. MAHON: Yes. Mrs. Bradley told us when the child came back.

MR. NAGLER: May I see the record which the witness is examining?

MR. O'CONNOR: Objection.

THE REFEREE: No, you may not.

MR. NAGLER: In other words, I am being denied the opportunity to examine the records which the witness is using to refresh his recollection?

THE REFEREE: He answered the statement.

MR. NAGLER: Do you have an independent recollection, Mr. Mahon, of the conversation between Mrs. Bradley and the intake worker on June 15, 1967?

MR. O'CONNOR: I object to this.
It is quite obvious he doesn't have it.

THE REFEREE: I sustain the objection.

MR. NAGLER: Can you refresh your recollection by examination of the case record?
And might I examine the document, Mr. Hearing Officer, which the witness is using to refresh his recollection as to this specific point?

THE REFEREE: I don't know yet.
Mrs. Bradley, in June, when you went to the local Welfare Center, did you bring your child with you?

MRS. BRADLEY: Yes.

THE REFEREE: And did you tell the case worker when your child returned?

MRS. BRADLEY: I don't remember.

THE REFEREE: O.K. If it's not there, it's not there.

MR. BUREMS: According to the record, when Mrs. Bradley was visited on 5/29/67 she reported that Lawrence returned on 5/12/67.

MR. NAGLER: Who conducted the visit to Mrs. Bradley on 5/29/67?

MR. MAHON: I did.

THE REFEREE: And she told you that this is when the child --

MR. MAHON: Yes.

MR. NAGLER: On 5/29 did you actually see the child?

MR. MAHON: Yes.

MR. NAGLER: And you stated previously, you subsequently determined that Mrs. Bradley was allegedly being paid the sum of $40 per week?

MR. MAHON: Yes.

MR. O'CONNOR: Objection.

THE REFEREE: No, Mr. Nagler; that was brought out before.

MR. O'CONNOR: I think the position is very clear, and Mr. Nagler should proceed with his offer of proof.

THE REFEREE: Do you want to proceed with a new question? We said this $40 a week several times. Let's not go over it again.

MR. NAGLER: Do you have any reason to believe that the child had not returned to the home on 5/12/67?

MR. O'CONNOR: Objection.

THE REFEREE: Sustained. Go ahead.

MR. NAGLER: What is the basis of the objection?

MR. O'CONNOR: Speculation.

THE REFEREE: He stated that she told him when the child returned home, and there is no sense getting --

MR. NAGLER: He also stated he actually saw the child on 5/29.

THE REFEREE: Next question.

MR. NAGLER: Did you see anything to indicate that the child had just that day returned?

MR. O'CONNOR: Objection. Speculation.

THE REFEREE: Obviously, he can only go on what she told him, and this is what he says she told him.

MR. NAGLER: I have an exception on the question of his own personal observation.

THE REFEREE: No discussion, please.

MR. NAGLER: And yet, notwithstanding Mrs. Bradley's statement, you did not provide her with the alleged surplus sum of 16.70 semimonthly when you discovered that her wages were allegedly $40 per week?

THE REFEREE: I think they testified that is so.

MR. NAGLER: Did you, on May 29th, Mr. Mahon, discuss with Mrs. Bradley the alleged absence of her child from the home for the period March 26th to May 12th?

MR. MAHON: Yes.

MR. NAGLER: You did?

MR. MAHON: Yes.

MR. NAGLER: Did you ask where the child was during this period?

MR. MAHON: Yes.

MR. NAGLER: What did she allegedly tell you?

MR. MAHON: That her child was in West Virginia with her mother-in-law and father-in-law.

MR. NAGLER: Did you ask her whether the absence was intended as temporary or permanent?

MR. O'CONNOR: I object to this.

THE REFEREE: I will let him answer if he remembers.

MR. MAHON: Yes.

MR. NAGLER: You did. What did she tell you?

MR. MAHON: That it was intended to be temporary.

MRS. NAGLER: Did Mrs. Bradley tell you how the child managed to get from New York to West Virginia?

MR. O'CONNOR: I object to that.

THE REFEREE: I will sustain the objection.

MR. O'CONNOR: I would like to clarify for the record, the issue is whether the Department acted improperly in suspending the case.

THE REFEREE: And if they did act improperly, whether or not she may be entitled to reimbursement.

MR. NAGLER: That's correct.

THE REFEREE: I am not concerned now as to how the child got there.

MR. NAGLER: I will rephrase the question in line with the financial issue involved.

Did Mrs. Bradley inform you of who paid the transportation --

MR. O'CONNOR: I object to this again.

MR. NAGLER: -- from New York to West Virginia?

MR. O'CONNOR: I object to it.

THE REFEREE: I will let the question in.

MR. MAHON: Yes, she did.

MR. NAGLER: What did she tell?

MR. MAHON: That the transportation was provided by her in-laws.

MR. NAGLER: Do you have an independent recollection of that statement?

MR. O'CONNOR: I object to that.

THE REFEREE: I sustain it. He has answered the question.

MR. NAGLER: I am wondering whether there isn't any evidence based on his recollection at the time the conversation was held.

MR. O'CONNOR: It's already been pointed out he is doing this on a home visit. He was there himself. He is testifying on his recollection.

THE REFEREE: If there is a dispute --

MR. NAGLER: That is the point of my question, Mr. Zuckerman, and that's why it is a proper question.

THE REFEREE: -- she can testify to her recollection.

MR. NAGLER: Again I pose the question: Is this the witness' independent recollection?

THE REFEREE: He said that he was there, and he discussed this with her.

MR. O'CONNOR: I point out again, there are two issues: First of all, wrongful suspension, and if there is a wrongful suspension, then the financial issue.

THE REFEREE: Mr. Nagler, proceed.

MR. NAGLER: Mr. O'Connor --

THE REFEREE: Let him finish.

MR. O'CONNOR: I would like him to put in proof on direct testimony as to the wrongful suspension of the case, and if it is demonstratedthere is sufficient evidence, we will then go into the financial issue.

MR. NAGLER: Is that the fourth or fifth request?

THE REFEREE: Do you want to proceed, please?

MR.NAGLER: I do. I wish to proceed to impeach the witness.

THE REFEREE: Next question, please.

MR. NAGLER: Do you have an independent recollection of the conversation that took place in the home of Mrs. Bradley on May 29th?

THE REFEREE: He already answered that.

MR. O'CONNOR: I object.

THE REFEREE: He said he was there, and he spoke to her, and he has knowledge of it, and there is no sense going into it again.

MR. NAGLER: Did you make an entry in the case record?

MR. O'CONNOR: I object.

THE REFEREE: Sustained.

MR. NAGLER: I wish to point out, Mr. Zuckerman, that if the witness' recollection at the time of the conversation was different from his recollection at this time, this is a document which we may wish to put in evidence, which may be helpful to our client's case, and therefore we ask the Hearing Officer at this time to examine the case record for the purpose of ascertaining what the conversation conducted at the interview of 5/29/67 dealt with.

THE REFEREE: I will look at the record, that portion of the record.

Off the record.

(Discussion off the record.)

THE REFEREE: On the record again.

It is apparent to me at this time that this witness is testifying from his own knowledge as to what happened, and as a matter of fact, it is in accord with the record.

MR. NAGLER: I wish to examine the record for the purpose of ascertaining --

THE REFEREE: I will show you just that portion of the record, Mr. Nagler, if you will step over here, dealing with this issue.

(Mr. Nagler examines record.)

MR. NAGLER: Did you at any time attempt to contact Mrs. Bradley's in-laws?

MR. O'CONNOR: Objection.

THE REFEREE: Sustained.

Mr. Nagler, please, will you get to the point?

MR. NAGLER: It's a matter of the costs. That was my question which you interrupted. The costs, the expenses.

THE REFEREE: At this time --

MR. O'CONNOR: The Department says the suspension is legitimate.

THE REFEREE: At this time I am going to rule that any claim for retroactive reimbursement should be testified to, if there is such a claim, by your client. She will be --

MR. NAGLER: I have one more question along these lines.

Did Mrs. Bradley indicate to you whether or not she was sending any money down to West Virginia for the purpose of taking care of the child?

MR. O'CONNOR: I object.

THE REFEREE: I will permit that.

MR. NAGLER: To the best of your recollection.

MR. MAHON: Yes.

THE REFEREE: Did she tell you she was sending money to the child?

MR. MAHON: Yes.

THE REFEREE: Did she say how much?

MR. MAHON: She said she was sending the semimonthly allowance.

THE REFEREE: How much?

MR. MAHON: I think it's $14 and change.

MR. NAGLER: She said she was sending the $14 semimonthly?

THE REFEREE: He said something like that.

MR. MAHON: $14 and change, the child's pre-added allowance.

MR. NAGLER: And you asked whether this was for the entire period from 3/26/67, when the child allegedly left the home, until 5/12, when the child allegedly returned to the home?

MR. MAHON: Mrs. Bradley told me she sent the money down there while the child was down there, all through.

MR. NAGLER: Did you at any time reimburse Mrs. Bradley for the amount of money which she was sending down to care for the child --

MR. O'CONNOR: I object.

MR. NAGLER: -- during this temporary absence in West Virginia?

THE REFEREE: Overruled.

MR. MAHON: No.

THE REFEREE: I think the record indicates the period of time for which she received the grant and the period of time for which she didn't and when it was reinstated.

MR. NAGLER: Two other questions on this point:

I ask you to examine the case record, Mr. Mahon, the case supervisor, or Mr. Burems, or any other Agency representative here present, to ascertain whether or not there is in the record a letter demanding a fair hearing on behalf of Synester Bradley, a copy of such letter, dated June 1, 1967.

THE REFEREE: What is the purpose of the request,

Mr. Nagler?

MR. NAGLER: Under the Social Services Law, when a fair hearing is demanded in a case which has been suspended, there is a requirement that the Agency provide emergency assistance for the period pending the fair hearing, and we claim that the amount of such assistance should be the deficit in the budget.

THE REFEREE: We know, under any circumstances, for what period they paid it, and any request for a fair hearing should have been and was made, presumably, to the Department of Social Services.

MR. NAGLER: Yes, but the Family Services Division consistently instructs us to send copies of such letters.

THE REFEREE: Do you have a copy of such a letter?

MR. NAGLER: Do you have a copy?

THE REFEREE: Why don't you be so good as to introduce it, rather than have these people spend so much time searching?

MR. NAGLER: I am quite willing to introduce it in evidence.

I wish it noted that at the bottom of the letter it is noted that a copy was sent to the Commission.

THE REFEREE: It speaks for itself.

At this time the appellant introduces in evidence as Appellant's Exhibit 1 a copy of a letter dated June 1, 1967, to Joseph Lochheim and to Commissioner Ginsberg.

Appellant's Exhibit 1.

(Copy of letter dated June 1, 1967, was received and marked Appellant's Exhibit No. 1 in evidence.)

MR. NAGLER: Off the record.

(Discussion off the record.)

THE REFEREE: And this letter is made available to the Agency.

Why don't you prove your case by your witness?

MR. NAGLER: I have already proved my case by their witnesses.

MR. O'CONNOR: That's the point I made with 127(a).

MR. NAGLER: Let's clarify this; Mr. O'Connor consistently resists this. I want our demand for documents to be complied with.

THE REFEREE: I don't want any discussion. If there is anything now you feel hasn't been proved, please do so by your witness.

MR. NAGLER: O.K.

SYNESTER BRADLEY was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NAGLER:

Q Mrs. Bradley, did Paul Hecht visit your home on or about the 27th of April 1967?

A Yes.

Q How did he obtain entry to your home?

MR. O'CONNOR: Objection.

THE REFEREE: Objection sustained. As you know, I ruled we would not go into the circumstances of Mr. Hecht's visit. That is not the subject of this hearing.

MR. NAGLER: We are claiming that it is the subject of this hearing only to the extent that any evidence procured by the Agency --

THE REFEREE: Should not be considered?

MR. NAGLER: -- not being present in the home for this period, the child not being present in the home for this period.

THE REFEREE: We noted that, Mr. Nagler.

Q Was your case, subsequent to Mr. Hecht's visit, closed?

A I would say no.

Q It wasn't closed? Was it suspended at any time subsequent to Mr. Hecht's visit?

A No.

THE REFEREE: Off the record.

(Discussion off the record.)

BY MR. NAGLER:

Q Was it closed subsequently?

A Yes.

Q Was it subsequent to his visit the case was closed?

A Yes.

Q Approximately on what date was it closed?

THE REFEREE: We know when it was closed. She said she didn't remember the exact date. You've got the exact date. Why go into it again.

Q Do you recall that a Mr. Mahon visited your home on or about May 29, 1967?

A Yes.

Q Do you remember -- do you know what caused Mr. Mahon to visit your home on that date?

A It was an official visit, a regular monthly visit.

THE REFEREE: I can't hear you.

THE WITNESS: It was an official visit.

Q While your case was closed?

A While my case was closed, yes.

MR. O'CONNOR: Can I have that question read back, please?

(The question and answer were repeated by Mr. Nagler.)

BY MR. NAGLER:

Q From the period May --

THE REFEREE: Off the record.

(Discussion off the record.)

MR. NAGLER: I don't schedule the case, Mr. Hearing Officer. The State schedules them. It was obvious to all concerned, to Mr. Case and Mr. Meyers, that this would be a lengthy hearing, and I refuse to take the responsibility for an adjournment of this case. I refuse to request it.

THE REFEREE: I am not asking you to request it. I am telling you we may have to adjourn it.

MR. NAGLER: If that's the situation, and if the State if going to adjourn it further than it is now -- I wish to point out that on August 1, 1967, I wrote a letter to Mr. Harry Brown of the Family Services Division, in which I stated in point: "Today is the 62nd day from the date of our request for a fair hearing in behalf of the above-named client." That was August 1st.

THE REFEREE: At this point let's continue with this hearing until I decide to adjourn it.

MR. NAGLER: May I have a short recess to talk to my client?

I think we may as well go off the record.

THE REFEREE: All right. Off the record.

(Discussion off the record.)

THE REFEREE: Let us proceed.

BY MR. NAGLER:

Q Mrs. Bradley, from approximately May 9, 1967, when the Agency allegedly closed your case, until 6/16 -- that's June 16, 1967 -- did you receive any money whatsoever from the Agency?

A No.

THE REFEREE: You are repeating. We know what she got. What's the sense of asking her? The question is clear in the record.

Is there something new?

MR. NAGLER: What do you wish me to prove?

THE REFEREE: It's up to you. If you are finished, you are finished.

MR. NAGLER: I am trying to put in an entire case.

MR. O'CONNOR: Let us make the record clear. If the City's directions were followed, this would not have happened.

MR. NAGLER: Objection. No. 7 --

THE REFEREE: We know what she got. If there is something missing, bring it out; if not, let's proceed.

BY MR. NAGLER:

Q Mrs. Bradley, were you in fact working at any point during this period?

A Yes.

Q Where were you working?

A St. Augustine Church.

Q How much were you earning?

A $40 a week.

Q Were there any deductions from your salary?

A No.

Q When, approximately, did you stop working, to the best of your recollection?

A June, the first week of June.

Q Did you inform the Agency you had stopped work around that time?

A Yes.

Q At about the same time you left work?

A Yes.

Q Did the Agency give you any money for that at the time you informed them you left work?

A No.

Q As a result of the failure of the Agency to give you money and the fact that you had left employment, did any debts result? Were you required to borrow a sum of money?

A Yes, I borrowed money.

Q Approximately how much money did you borrow?

A Well, it was approximately ten dollars for food.

Q Ten dollars for food?

A Yes.

THE REFEREE: Do you remember when that was?

THE WITNESS: During the period after I was suspended. I borrowed it from a neighbor.

THE REFEREE: Was it one neighbor or a group of neighbors?

THE WITNESS: One person.

THE REFEREE: Who was that?

THE WITNESS: Miss Johnson.

BY MR. NAGLER:

Q Who actually paid the bus fare of your child to West Virginia?

A My mother-in-law paid it.

Q And did you go along on that trip?

A Yes, I did.

Q And did your mother-in-law pay that fare as well?

A Yes.

Q Did you send any money to West Virginia for that period during which your child was down there?

A Yes.

Q How much money did you spend?

A My baby's food allowance, which is $14.90, and his clothing allowance, which is 3.90 semimonthly.

Q 14.90 plus 3.90?

A Yes.

Q And you sent that down semimonthly?

A Yes.

MR. NAGLER: No further questions.

THE REFEREE: Let's go on to the next issue. I think the other issues won't be as lengthy.

The second issue is adequacy of utility grants.

Mr. Nagler, tell us in what manner they were inadequate.

MR. NAGLER: I will tell it by calling Mrs. Bradley.

BY MR. NAGLER:

Q Mrs. Bradley, have you been receiving utility bills from Con Ed Company, Consolidated Edison Company?

A Yes.

Q Are these for gas and electricity?

A Yes.

Q One bill for both gas and electricity?

A Yes.

THE REFEREE: How much do you owe Con Edison?

MR. NAGLER: That is not my question.

THE REFEREE: That's my question.

Do you owe money now to Con Edison?

MR. NAGLER: Mr. Zuckerman --

THE REFEREE: If you tell me what you are driving at --

MR. NAGLER: I will.

MR. O'CONNOR: I would like to know the times, to set a time.

THE REFEREE: What are you driving at?

MR. NAGLER: The amount of the bills, the amount of the semimonthly budget, and the fact that the amount in the semimonthly budget does not compare to the amount of the bills, and therefore there is a budget deficit to that amount.

THE REFEREE: It is ascertainable by the Agency how much the bills actually are. The rent is paid on an as-paid basis, and the electricity should be as well.

MR. NAGLER: Considering the fact that the bills are far in excess of the amount --

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: Mr. Nagler, what does this lady pay per month for utility bills?

MR. NAGLER: Very good. That's exactly what I am trying to get at.

BY MR. NAGLER:

Q Do you recall offhand how much?

A Approximately 18 every two months.

THE REFEREE: For gas and electricity?

THE WITNESS: Yes.

THE REFEREE: And what is your standard allowance for gas and electricity for a family in an apartment of this lady's size?

MR. BUREMS: $14.

THE REFEREE: Every two months?

MR. BUREMS: Plus she gets an additional -- she gets about $15.

MR. NAGLER: Why does she get the additional dollar?

MR. BUREMS: We adjusted it based on her consumption, as shown by her bills.

THE REFEREE: Since she is paying more than the average, you grant more than the average?

MR. BUREMS: Yes.

THE REFEREE: You are granting the $15, and she says it is about $18?

MR. BUREMS: I think that -- if this is not sufficient, she can submit her bills to the Agency, who will review them in terms of upgrading her allowance for this purpose.

MR. NAGLER: It is specifically inadequate, in answer to the issue in the fair hearing as it was raised, in terms of the notice for a fair hearing and in terms of a demand for a fair hearing.

THE REFEREE: Do you owe any money for Con Edison?

THE WITNESS: I received the money to pay them.

THE REFEREE: You did receive it. So we are only concerned now --

BY MR. NAGLER:

Q When did you receive it?

A It was two months ago, for the last -- oh, way back.

THE REFEREE: It is not important to me when she received it. We are concerned with the future amount. The City has indicated --

MR. NAGLER: We are not concerned with the future amount; we are concerned with the recurring grant.

THE REFEREE: On a semimonthly basis.

The City has now indicated it will reevaluate based on her bills, and accordingly, on this issue, I adjourn this case for them to take what action they deem proper and report back. I believe it may be adjusted, and there is no sense in going into it. We are talking about three dollars every two months.

MR. NAGLER: There are only two ways in which the Agency could --

THE REFEREE: By adjusting --

MR. NAGLER: -- on a recurring basis --

THE REFEREE: The City has now stated on the record they will investigate and determine if in fact she is entitled to an additional recurring grant.

MR. NAGLER: I will except to that only on the basis that the fair hearing letter was written on or about June 1st --

THE REFEREE: I know when it was written.

MR. NAGLER: It gives the City Agency 30 days in which to answer. The date is now November 2nd.

THE REFEREE: Your exception is noted.

MR. O'CONNOR: I would also like to point out, it is quite obvious that the minimum recurring grant involves need, and the client has stated she has no need at the present time.

THE REFEREE: No more discussion on utilities. Next point. Special furniture need.

MR. NAGLER: Mr. O'Connor has raised a very important point. The client has not stated she has no need.

THE REFEREE: I am not pursuing this point any more. As far as I am concerned, we are going on to the next question of special furniture needs.

MR. NAGLER: I have an exception, and I wish, in the record -- I wish documents contained in the case record, pursuant to our demand for documents indicating what investigation has been done by the Agency to make the prior adjustment and why this adjustment has not been, as we requested in our fair hearing letter, for a grant on a recurring basis, if you are adjourning the hearing.

THE REFEREE: Request denied because of my previous ruling.

MR. NAGLER: I would ask that in the interim, while the Agency is reinvestigating this, conceivably for the 25th time --

MR. O'CONNOR: I object to these statements.

THE REFEREE: Please, all right.

MR. O'CONNOR: I move to strike that.

MR. NAGLER: -- we be given any documents regarding past or present investigation of the client's needs with regard to electricity and anything they proposed to do about this item in advance of the rescheduling of the hearing.

THE REFEREE: I direct that when you reinvestigate to determine this lady's bills, when you find out what her bills are and what you are going to do, will you notify Mr. Nagler and tell him what it is you are going to do.

MR. NAGLER: May I state, Mr. Zuckerman, this is not satisfactory for one very important reason.

MR. O'CONNOR: I would appreciate --

THE REFEREE: Let him talk, please.

MR. NAGLER: That is that the Agency practice, local agency practice, is not satisfactory in this regard.

MR. O'CONNOR: Mr. Zuckerman, you made your ruling. I would appreciate if we could move on.

THE REFEREE: Right. I have made my ruling. Whatever it is you do in -- anything on electricity, tell him. If you do nothing, tell him also, and your reasons.

MR. NAGLER: My objection was that your ruling condones past Agency malfeasance.

THE REFEREE: Next point.

MR. NAGLER: With regard to the furniture needs of the client.

THE REFEREE: Mrs. Bradley, did you at any time notify the Agency that you needed additional items of furniture in your apartment, and if so, when and what items of furniture?

MR. NAGLER: "Yes" is the answer.

THE REFEREE: When and what?

MR. NAGLER: Well --

THE WITNESS: I was going back to the minimum standard.

THE REFEREE: What is it that you asked the Agency for that you need?

THE WITNESS: A dresser.

BY MR. NAGLER:

Q Did you submit a minimum standard form to the Agency?

A Yes.

Q Approximately when?

A Last year.

Q You don't recall the exact date?

A No.

MR. NAGLER: I would ask again that the Hearing Officer examine the record for the purpose of ascertaining whether or not there is a document contained therein, since the Commissioner of Social Services of the City of New York and his agents present at this hearing have failed to comply with our request for -- demand for documents again, both general and specific.

MR. O'CONNOR: I would like to say something.

The appellant has just stated she submitted a request last year sometime. The question at this hearing is :

what are her needs now?

THE WITNESS: I still need a dresser.

MR. O'CONNOR: Let's go into what she needs.

THE REFEREE: Mrs. Bradley, when did you ask for a dresser?

And Mr. O'Connor, will you look and see --

MR. O'CONNOR: We have our proof on this. Let's see what --

THE REFEREE: Did she request a dresser?

MR. MAHON: Yes, she did.

MR. O'CONNOR: And there is also a withdrawal of that request.

MR. NAGLER: Mr. O'Connor made a statement, and I want it to be stricken from the record or an opportunity to cross-examine.

THE REFEREE: When we go into a need for a dresser you can cross-examine. Let's determine what she needs.

You say you need a dresser. Anything else?

THE WITNESS: That's all I need is a dresser.

THE REFEREE: That's it.

Now, when did you ask them for a dresser?

THE WITNESS: Last year, September of '66.

THE REFEREE: And you still need it?

THE WITNESS: Yes.

MR. O'CONNOR: I would like to ask a question.

THE REFEREE: Let him finish.

MR. NAGLER: If I am going to present my case, I would like an opportunity to do so.

BY MR. NAGLER:

Q Have you discussed this with case workers subsequently?

MR. O'CONNOR: Subsequent to what?

THE REFEREE: To last September.

A Yes.

THE REFEREE: When?

And you still need a dresser?

THE WITNESS: Yes.

THE REFEREE: O.K.

Q And the Agency has continuously refused to give you the dresser?

THE REFEREE: If she needs the dresser, she needs the dresser.

MR. NAGLER: I am trying to ascertain whether it was an oversight or --

THE REFEREE: I am not concerned whether it was an oversight. I want to know if she needs a dresser.

MR. NAGLER: Basically, the point here -- and it may be pertinent from the standpoint of the entire case and may reflect on other issues as well as to whether the failure or refusal to give a dresser was misfeasance, malfeasance, or nonfeasance --

MR. O'CONNOR: Did you ever tell this present case worker you were withdrawing your request for a dresser?

MR. NAGLER: Objection; irrelevant.

THE REFEREE: I will permit the question.

MR. NAGLER: Have the question repeated.

MR. O'CONNOR: Did you ever tell the case worker you no longer wanted the dresser, you were withdrawing your request for a dresser?

THE WITNESS: Yes.

THE REFEREE: When was that that you told him that, if you remember, approximately?

THE WITNESS: I don't remember.

MR. O'CONNOR: Was it a month ago, two months ago, three months ago?

THE REFEREE: Will you tell me why you told him you didn't need a dresser?

MR. NAGLER: Did she say she didn't need a dresser?

THE REFEREE: You said you were withdrawing your request. Will you tell us why you told him you were withdrawing your request?

(No response.)

THE REFEREE: Why did you tell him you were withdrawing your request for a dresser?

MR. NAGLER: May I consult with my client?

MR. O'CONNOR: I would like to have the question answered.

THE REFEREE: It's a very simple question. If she can't remember, I will accept that. She had her reason, if she remembers it.

MR. NAGLER: Would you like to say something?

MR. O'CONNOR: We don't want the witness prompted. If she doesn't remember, she doesn't remember.

THE REFEREE: Is it you don't remember? If so, that's all right.

THE WITNESS: I remember why.

THE REFEREE: Tell us why.

MR. NAGLER: This is upsetting.

THE REFEREE: I will ask the City.

Did she tell you why she was withdrawing the request when she told you she was?

MR. MAHON: She said it was unimportant and that that was not what the fair hearing was going to be about, and it was unimportant, when I went to visit her to discuss the items listed.

THE REFEREE: Are you familiar with the items of furniture in her apartment?

MR. MAHON: Yes.

THE REFEREE: And in your opinion does she need a dresser, if you know, based on your observation? I am sure you didn't inspect her drawers, but if you know.

MR. MAHON: Yes, if I remember correctly.

THE REFEREE: Does she need the dresser?

MR. MAHON: Yes.

THE REFEREE: Well, let me ask you this: Is there any reason why you wouldn't make a special grant for a dresser?

MR. MAHON: We gave a special grant at one time for a dresser.

THE REFEREE: Is that the reason you are not granting it again?

MR. MAHON: I believe it was at that time.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: On the record.

MR. NAGLER: I want to state that this alleged withdrawal procured from the client --

MR. O'CONNOR: It wasn't an "alleged withdrawal";

the client withdrew --

MR. NAGLER: I am extremely angry. This is an attempted fraud by the Agency.

MR. O'CONNOR: I move to strike that.

MR. NAGLER: This Agency promotes upon us at these hearings a so-called need request game which they play.

THE REFEREE: Mr. Nagler, I want no discussion on games or fraud.

MR. O'CONNOR: I want to strike that last statement.

MR. NAGLER: In full view of the laws of libel I am calling the Agency, stating that the Agency is guilty of promoting fraud.

MR. O'CONNOR: I move to strike. I am moving that will be stricken from the record. We will not go into this.

MR. NAGLER: You will have to strike it five times. I will make the statement the Agency is committing fraud.

MR. O'CONNOR: I will move to strike again.

THE REFEREE: No further discussion.

Mrs. Bradley, will you tell us why you told the Agency you were withdrawing the request?

MR. NAGLER: I can give better information at this point.

THE REFEREE: Well, I think she is ready.

Would you tell us, if you want to? If you don't want to --

MR. NAGLER: Mr. Zuckerman, I would suggest you are attempting to examine Mrs. Bradley on this point at this time. Mrs. Bradley is obviously in no condition --

THE REFEREE: I think she was prepared to answer.

MR. NAGLER: I have more information on this than Mrs. Bradley.

MR. O'CONNOR: The City is willing to reevaluate the dresser.

THE REFEREE: Do you remember why you withdrew, Mrs. Bradley?

THE WITNESS: Yes.

THE REFEREE: Tell us why.

THE WITNESS: It was after Mr. Hecht visited me, and he searched through my house, and I asked my worker for a dresser, and then it has to be evaluated. That mean he has to see if I have one and if I need another dresser, and I refused for him to search my house to see if I had one or to see if I needed it, and that's why I asked him to forget about it.

THE REFEREE: All right.

MR. NAGLER: In other words, Mr. Zuckerman, as I stated earlier, based on the alleged withdrawal which the Agency states, it was not a withdrawal, and it was a withdrawal procured on the basis of an illegal --

MR. O'CONNOR: Objection.

THE REFEREE: Sustained.

Mrs. Bradley says she needs a dresser.

MR. NAGLER: It also is clear that Mrs. Bradley said she needed a dresser since --

THE REFEREE: The City says she may need it, and we are adjourning on this point and directing them to reinvestigate, and if she needs it, to grant it.

MR. NAGLER: Our hearing letter was written June 6th, and the law specifically makes a statement with regard to the needs of the client. The alleged withdrawal was procured by duress of the Agency.

MR. O'CONNOR: I move to strike.

MR. NAGLER: He can move to strike from here to the moon, but the fact of duress is still the same.

THE REFEREE: Fine. I have noted that.

MR. O'CONNOR: I move to strike that.

MR. NAGLER: And it is --

THE REFEREE: Is there anything else now that you want to say? We are just about finished.

MR. NAGLER: Adjourning for the purpose of reevaluating is no answer. These people sitting at this hearing have placed the client in this position whereby she needs a fair hearing at this time. A due demand is made for a fair hearing. The Agency is given, by the State, 30 days in which to reevaluate. Now, approximately four months -- make that five months after the hearing is requested the Agency is now given the opportunity to reevaluate when it is clearly shown by the testimony of the client that the only basis on which an alleged withdrawal was procured is under the direction of the Agency, through an illegal search.

MR. O'CONNOR: This is a self-serving declaration.

MR. BUREMS: The delay was caused in part by a request for adjournment for this attorney himself.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: On the record.

At this time it is stipulated by and between the attorneys for the parties herein that the City conceded at this time that she has requested a dresser, that she needs a dresser, and they will authorize a grant for a dresser.

Is there anything else?

MR. O'CONNOR: Yes. The City would like to put in its rebuttal to Mr. Nagler's cross-examination.

THE REFEREE: On what?

MR. O'CONNOR: On wrongful discontinuance of the grant.

THE REFEREE: All right, go ahead.

MR. O'CONNOR: We would like about two minutes to confer on this issue.

(Whereupon a recess was taken.)

THE REFEREE: On the record.

MR. O'CONNOR: I would like to put the case worker on.

THE REFEREE: Yes.

RICHARD MAHON was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'CONNOR:

Q When did you receive knowledge of the fact that Mrs. Bradley was working and the child was no longer in the home?

A 5/9/67.

Q At this point you suspended the case?

A Closed the case.

Q How did you receive this information?

A From B.P.A.

Q Prior to this time did Mrs. Bradley ever contact you to inform that she was working and the child was out of the home?

A No.

Q During this period how much was she over-budgeted?

MR. NAGLER: Objection; calling for a conclusion.

THE REFEREE: I will permit it.

MR. O'CONNOR: It's not.

THE REFEREE: Please answer the question, if you know.

Q Approximately.

A Over $200.

Q She was receiving approximately $200 more than she was entitled to?

MR. NAGLER: Objection.

Q When Mrs. Bradley made her application, on 5/23, for assistance, did you make up an estimated budget?

A Right.

Q What was the basis of the estimated budget?

A Income of $40 per week and the child in the home.

Q And why wasn't this money issued immediately?

A Because this was a pending case similar to all other pending, in which we have to complete an investigation, and we have four weeks in which to do this, and there was no need at any time for emergency acceptance.

Q "Assistance," you mean?

A Right.

Q In other words, there was no indication from the facts that were given to you that there was any dire emergency that would have to be met quickly?

A Right.

MR. NAGLER: Objection again. That's a conclusion.

Q Do you have any knowledge of whether Mrs. Bradley was still working at this time?

A What time?

Q Approximately the first week in June.

A Yes. She did not notify me until 6/7 or 6/9 that she was -- she said she had lost her job. The case was accepted six days later.

THE REFEREE: This $200 that you refer to, is this $40 a week you are talking about that she had?

MR. NAGLER: First of all, I object to this, based on the forbidden fruit doctrine. This is fruit of an illegal search and produced as a result thereof.

THE REFEREE: This $200, what does this represent?

THE WITNESS: A combination of the income of $40 a week plus the full allowance from the Department of Welfare less the 16.70 that Mrs. Bradley sent to her child in West Virginia.

MR. O'CONNOR: The reason this was brought up is Mr. Nagler made certain statements that the City vindictively cut this woman off, and she had no money and was required to borrow.

THE REFEREE: I am not concerned about the vindictiveness.

MR. O'CONNOR: No further questions.

MR. NAGLER: Again I move the entire testimony of this witness be stricken insofar as it was based on, the witness stated, a communication from B.P.A., based on forbidden fruit result of illegal search.

MR. O'CONNOR: Objection.

THE REFEREE: How do you know she earned $40 a week? Did you get this for yourself from the church?

THE WITNESS: Yes, eventually I did. I made a visit to the church.

MR. NAGLER: I want the answer of the witness read back as to where he got the information.

MR. O'CONNOR: He said he got it from B.P.A.

THE REFEREE: He said that originally; I am aware of it.

MR. NAGLER: Mr. O'Connor asked a question; is he bound by the answer?

THE REFEREE: I am not bound by the answer. I can ask him.

You stated you got it from B.P.A.?

THE WITNESS: Originally.

THE REFEREE: Did you verify the $200?

THE WITNESS: We verified it.

THE REFEREE: Who did?

THE WITNESS: Eventually I did.

MR. NAGLER: Any information obtained as a result of illegal search and invasion of privacy --

THE REFEREE: I am not holding this hearing on Mr. Hecht's visit. That has no part in this hearing. I don't want any further discussion on it.

MR. NAGLER: As we also understood, since the investigation which the case worker has conducted was the result of an investigation conducted by B.P.A. based on Hecht's visit, any testimony on the part of the case worker is forbidden fruit.

THE REFEREE: Your witness has testified. We know she was working and where, and at this point it is really immaterial.

MR. NAGLER: My witness testified to a very limited number of things based on the fact that previous rulings at this hearing required that certain evidence -- allowed certain evidence to be admitted when the City originally submitted their case.

The City is again presenting this evidence. We did not want this evidence adduced from the client. We did not want the City to raise this question.

MR. O'CONNOR: The City did not get a second bite of the apple because it didn't get a first bite.

THE REFEREE: I know your position.

MR. NAGLER: I have cross-examination now of this witness.

CROSS-EXAMINATION

BY MR. NAGLER:

Q You got a communication from B.P.A., Mr. Mahon?

A Yes.

Q Did anyone direct you to do an investigation?

MR. O'CONNOR: Objection. I object.

THE REFEREE: I sustain the objection.

I don't know what it has to do with this case.

MR. NAGLER: What is the basis of the objection?

MR. O'CONNOR: The question is whether the woman was working, and obviously she was, and the Department was not told by the client directly.

THE REFEREE: I sustained the objection.

MR. NAGLER: I want to cross-examine Mr. O'Connor's statement.

THE REFEREE: You can't cross-examine a statement. If you have a question of the witness, ask it.

MR. NAGLER: Mr. O'Connor, do you have any personal knowledge --

MR. O'CONNOR: I am not going to answer any questions.

THE REFEREE: I will sustain the objection.

MR. NAGLER: I meant "Mr. Mahon." I apologize to Mr. O'Connor.

MR. O'CONNOR: Your apologies are accepted.

BY MR. NAGLER:

Q Do you have any personal knowledge of the time that Mrs. Bradley began work, personal knowledge?

MR. O'CONNOR: I object to this question.

THE REFEREE: I will permit it.

A What do you mean by "personal knowledge"? I spoke to her employer, who told me when she started working.

THE REFEREE: I think he is answering the question. He said, "I spoke to her employer."

THE WITNESS: Who told me.

Q Did you ever see Mrs. Bradley working there?

THE REFEREE: Sustained. Obviously he didn't.

MR. NAGLER: "Personal knowledge" means personal knowledge.

THE REFEREE: He stated, "I received my knowledge from her employer." That's personal knowledge.

MR. NAGLER: May I cross-examine another witness produced by the Agency at this hearing?

THE REFEREE: Sure.

MR. NAGLER: Mrs. Demarest, you are the case supervisor in this case?

MRS. DEMAREST: Yes.

MR. NAGLER: I notice that at this hearing you seem to have displayed quite a knowledge of the case. Do you have any personal knowledge as to the circumstances regarding the employment --

MR. O'CONNOR: I object.

THE REFEREE: I will overrule the objection.

MRS. DEMAREST: Mr. Mahon did make a call and verify --

MR. NAGLER: Do you have any personal knowledge, yes or no, as to the circumstances regarding the employment?

THE REFEREE: You got your knowledge from whom?

MRS. DEMAREST: Mr. Mahon, who spoke to the employer.

MR. NAGLER: Did you not direct Mr. Mahon to make an investigation?

MR. O'CONNOR: I object; it is irrelevant.

THE REFEREE: I will sustain the objection.

MR. NAGLER: Had you ever spoken to Mrs. Bradley?

THE REFEREE: I will permit that.

Had you spoken --

MRS. DEMAREST: I spoke to Mrs. Bradley once during the work action.

THE REFEREE: What is a work action?

MRS. DEMAREST: The strike. I happen to know Mrs. Bradley.

MR. NAGLER: On what date did she come in?

MRS. DEMAREST: I don't know what date.

MR. O'CONNOR: What is the purpose of this cross-examination?

MR. NAGLER: She said that Mrs. Bradley came in.

THE REFEREE: What was that conversation about?

MRS. DEMAREST: She came in to say she hadn't gotten her check, and I explained to the worker I was aware of her situation and authorized a grant. That was on 7/11.

THE REFEREE: There is obviously no further -- she has no further knowledge.

MR. NAGLER: She has said a lot at this hearing on the side, and I am curious as to what her personal knowledge is.

MR. O'CONNOR: Objection.

THE REFEREE: She stated her own knowledge came from Mr. Mahon. She spoke to this lady only once in an unrelated incident.

MR. NAGLER: Rather than your description of what she said, I would like her answers read back to ascertain specifically what she said.

MR. O'CONNOR: I don't see the relevancy of this.

MR. NAGLER: I think she is not --

THE REFEREE: I don't want to take the time to read it back.

MR. NAGLER: May I continue my examination?

THE REFEREE: Sure.

MR. NAGLER: Mrs. Demarest -- is it Miss or Mrs.?

MRS. DEMAREST: Mrs.

MR. NAGLER: -- does a case worker have the authority --

MR. O'CONNOR: Objection.

THE REFEREE: Let him finish the question.

MR. O'CONNOR: He said, "Did the case worker have authority to close the case?"

THE REFEREE: Sustained. It doesn't matter who had the authority. The action speaks for itself.

MR. NAGLER: Exception. My exception is based on the fact I am being harassed and not allowed to cross-examine.

THE REFEREE: Nobody is harassed in these hearings. I don't like the implication.

MR. O'CONNOR: And I would like to say, in regard to the harassment issue, Mr. Nagler was allowed to put his case in through the Department.

MR. NAGLER: Only --

THE REFEREE: I don't want any more on harassment.

MR. NAGLER: They have not given me what I am entitled to, which they constantly do --

THE REFEREE: Any other questions?

MR. NAGLER: I am offering to prove by my last question that the case worker does not have the authority to close cases. In fact, Mrs. Demarest was consulted as to closing of the case --

MR. O'CONNOR: Objection again.

THE REFEREE: I have ruled it is irrelevant.

MR. NAGLER: Now I make an offer of proof.

THE REFEREE: I want no further discussion on this point.

MR. NAGLER: Am I not being allowed to make an offer of proof?

THE REFEREE: You are not allowed any further discussion as to who has authority to close this case.

MR. NAGLER: Subject to connection to show the fact that the case supervisor ordered the closing of the case?

THE REFEREE: It is immaterial as to who ordered it.

MR. NAGLER: And such an order was made, is the basic point, without actual knowledge of the employment circumstances other than information obtained by an unlawful search by the City.

THE REFEREE: I note your contention. I don't want any discussion on that very point. I made it clear, if you are driving back to Mr. Hecht's visit, I am not discussing that. I have noted your objection and will take no further testimony along those lines.

Mr. Nagler, it is clear to me your position is that their actions were unlawful because of this allegedly unlawful act. I know that.

MR. NAGLER: We finished that point.

THE REFEREE: Now you are getting back to it. I don't want to get back to it.

MR. NAGLER: We are now finished with that point. I am going to take another point, if I may have a moment to examine my case record.

Mr. Mahon, of your own personal knowledge, since you seem to have personal knowledge, as you so state, when do you allege Mrs. Bradley started work?

MR. O'CONNOR: I object to the form of the question. He is asking two questions there.

THE REFEREE: Yes.

Mr. Mahon, do you know when Mrs. Bradley started to work?

MR. MAHON: April 1, 1967.

THE REFEREE: How did you determine that?

MR. MAHON: From her employer.

THE REFEREE: And when did you determine this, if you remember, roughly? Was this after Mr. Hecht's visit?

MR. MAHON: Yes.

MR. NAGLER: No further questions.

THE REFEREE: It appears there is no further evidence to be adduced. This hearing is closed. It is closed on certain issues and adjourned on others that are left for investigation. It is adjourned on clothing but we have settled the dresser.

MR. NAGLER: Right.

MR. O'CONNOR: Not clothing; utilities.

THE REFEREE: Yes, that's correct. I'm sorry.

It is adjourned for a report on that.

CERTIFIED TO BE A TRUE AND
ACCURATE TRANSCRIPT OF THE
MINUTES TAKEN AT THIS FAIR
HEARING.

Pauline G. Winslow,
Hearing Reporter

* * *

I N D E X

WITNESS	DIRECT	CROSS
Synester Bradley	37	
Richard Mahor	60	65

E X H I B I T S

APPELLANT'S IN EVIDENCE		PAGE
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* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
------------------------x

SYNESTER BRADLEY, 1492 Longfellow Avenue,
Bronx, New York, individually and on behalf
of all others similiarly situated,
Plaintiffs,
vs.

MITCHELL I. GINSBERG, individually and as
Commissioner of the Department of Social Services
of the City of New York;GEORGE K. WYMAN, individually and as Commissioner of the State of New York
Department of Social Welfare, and Paul Hecht,
individually and as Special Investigator for the
Bureau of Public Assistance of the Department of
Social Services of the City of New York,
Defendants.

------------------------x

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

This cause coming on to be heard upon the application of SYNESTER BRADLEY to be allowed to prosecute the above entitled action in forma pauperis, based upon the affidavit of Stephen M. Nagler, verified the 3rd day of November, 1967, filed in accordance with the provisions of Title 28, United States Code, section 1915, it is hereby

ORDERED, ADJUDGED AND DECREED that SYNESTER BRADLEY be allowed to prosecute the above entitled action in the United States District Court for the Southern District of New York, and in appeal therein, without being required to prepay fees or costs or give security therefor because of her poverty as alleged in the affidavit and it is further

ORDERED that stenographic transcripts or printed records of any proceedings had herein including examinations before trial be made available to the Plaintiff at the expense of

---

upon
the herein, by delivering a true copy thereof to h personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the therein.
Sworn to before me, this day of 19

of the United States and that the office of the Stenographer of this Court is directed to make such services available for any examinations before trial and it is further

ORDERED that the Clerk file her motion and that the marshall shall serve such processes as may be appropriate without requiring payment pr security for costs.

District Judge

upon
the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.
Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated:

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF ss.:

INDIVIDUAL VERIFICATION

, being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF ss.:

CORPORATE VERIFICATION

, being duly sworn, deposes and says that deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.
This verification is made by deponent because
is a corporation. Deponent is an officer thereof, to-wit, its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF ss.:

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within
upon attorney(s) for
in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 at No.
upon deponent served the within
the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me, this day of 19

NOTICE OF ENTRY

Sir :- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney for

NOTICE OF SETTLEMENT

Sir :- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney for

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF N.Y.

Index No. Year 19

SYNESTER BRADLEY, 1492 Longfellow Ave. Bronx, N.Y. individually and on behalf of all others similiarly situated,
Plaintiffs,

vs.

MITCHELL I. GINSBERG, INDIVIDUALLY & as Comm. Dept. S.S. City of N.Y.; GEORGE K. WYMAN, individually & as Comm. State of N.Y. Dept. S.S.; Paul Hecht individually & as Spec. Invest. Dept. S.S. City of N.Y.,
Defendants.

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

STEPHEN M. NAGLER

Attorney for Plaintiffs
Office and Post Office Address
150 Nassau Street Room 1030
New York, N.Y. 10038

To

Attorney for

Service of a copy of the within is hereby admitted.

Dated,

Attorney for

RECEIVED
NOV 17 1967
DIV. OF LEGAL SERVICES

J. Lee Rankin
Corp Counsel
by [illegible]
Atty for Dept of Soc. Services
& Paul Hecht

Prosecute action without Prepayment of Fees etc., etc.,

U.S. DISTRICT COURT
FILED
NOV 17 1967
S.D. OF N.Y.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
- x

SYNESTER BRADLEY, 1492 Longfellow Avenue,
Bronx, New York, individually and on behalf
of all others similiarly situated,
Plaintiffs,

vs.

MITCHELL I. GINSBERG, individually and as
Commissioner of the Department of Social
Services of the City of New York; GEORGE
K. WYMAN, individually and as Commissioner
of the State of New York Department of Social
Services, and Paul Hecht, individually and
as Special Investigator for the Bureau of
Public Assistance of the Department of Social
Services of the City of New York,
Defendants.
- x

NOTICE OF
MOTION
67 CIV 3047

Nov 28
2

MEMO ENDORSED

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN M. NAGLER, Esq., duly sworn to the 25th of October, 1967 and the affidavit of SYNESTER BRADLEY, duly sworn to the 20th day of September, 1967 that the undersigned will move this Court at a motion term thereof, in Room 506 at the United States Courthouse, Foley Square, City and County of New York, on the 28th day of November at ten o'clock in the forenoon or as soon thereafter as Counsel can be heard for an order pursuant to 28 U.S.C. § 1915 authorizing the Plaintiff herein to prosecute her action and any appeal herein as a poor person without prepayment of fees and costs or security therefor and for a further order that stenographic transcripts or printed records of any proceedings had herein including examinations before trial be made available to the Plaintiff at the expense of the United States, and for such other relief as to this Court may seem just and proper.

(More)

Dated:New York, New York
November 15, 1967

Yours Truly,

CARL RACHLIN, ESQ.
STEPHEN M. NAGLER, ESQ.
Room 1030
150 Nassau Street
New York, N.Y. 10038

DAVID GILMAN
160 West 96th Street
New York, N.Y. 10025
Attorneys For Plaintiff

TO:J. LEE RANKIN, ESQ.
Corporation Counsel
City of New York
By Samuel Felder
Attorney For Defendants
Ginsberg and Hecht
Felix Infausto, Esq.
Counsel
Department of Social Services
State of New York
Attorney for Defendant WYMAN.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
67 CIV 3047

- x

SYNESTER BRADLEY, 1492 Longfellow
Avenue, Bronx, New York, individually
and on behalf of all others similiarly
situated,
Plaintiffs,

vs.

MITCHELL I. GINSBERG, individually
and as Commissioner of the Department
of Social Services of the City of
New York;GEORGE K. WYMAN, individually
and as Commissioner of the State of
New York Department of Social Welfare;
and PAUL HECHT, individually and as
Special Investigator for the Bureau of
Public Assistance of the Department of
Social Services of the City of New York,
Defendants.

- -x

AFFIDAVIT

STEPHEN M. NAGLER, Esq. being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York associated with Carl Rachlin, Esq.,a member of the Bar of this Court.

2. I am one of the attorneys participating in the preparation of this case and as such I am fully familiar with the facts herein.

3. This is an action for a Declaratory Judgement, a permanent injunction, and damages based inter alia on the unwarranted,and unlawful searches of the homes of Plaintiff and others similiarly situated by the Defendant Hecht and other agents of the Defendant Ginsberg and the violations of the right to privacy which have resulted therefrom. These

I believe Plaintiff's claim to have merit.

4. I have agreed to participate in the representation of the Plaintiff without fee or other compensation and I am informed by plaintiff and by all of the other attorneys participating in her representation that they are also acting without compensation.

5. In preparing this case for trial it will be necessary to use the various tools available for discovery including examinations before trial of the defendants and their agents. I am informed by the Plaintiff and agents of the Defendant Ginsberg confirm that the Plaintiff is a recipient of Public Assistance under the Aid to Dependent Children program and is completely without resources to pay for stenographic servuces at examinations before trial, or a transcript of testimony at said trial or for subpoena fees to insure the presence of witnesses, or for any of the other expenses entailed in prosecuting this action and any appeal herein.

WHEREFORE, I respectfully pray that an order be entered granting the relief requested in the Plaintiffs affidavit and Notice of Motion herein

Stephen M. Nagler

Sworn to before me
this 3rd day of November, 1967

Carl Rachlin

CARL RACHLIN
Notary Public, State of New York
No. 24-3192200
Qualified in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Term Expires March 30, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
- -x

SYNESTER BRADLEY, 1492 Longfellow
Avenue, Bronx, New York, individually
and on behalf of all others similiarly
situated,

Plaintiffs,

vs.

MITCHELL I. GINSBERG, individually
and as Commissioner of the Department
of Social Services of the City of
New York;GEORGE K. WYMAN, individually
and as Commissioner of the State of
New York Department of Social Welfare;
and PAUL HECHT, individually and as
Special Investigator for the Bureau of
Public Assistance of the Department of
Social Services of the City of New York,

Defendants.

- -x

AFFIDAVIT

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

SYNESTER BRADLEY, being sworn, deposes and says:

1. I am the plaintiff in the above entitled proceeding.

2. I am a recipient of public assistance under the Aid to Dependent Children program. My entire subsistence comes from such program. I have no other source of income and no other resources which would allow me to prosecute this action independently.

3. I am advised by my attorneys that this action has merit. My attorneys have agreed to serve completely without compensation.

4. My attorneys advised me that extensive discovery will be necessary in the prosecution of the within proceeding. This will involve the extensive use of court reporters, at

5. No previous application has been made for the relief required herein.

WHEREFORE, I respectfully pray that an order be entered permitting me to proceed as a poor person and that the expenses necessary to prosecute the within proceeding be paid by the court.

X Synester Bradley
Synester Bradley

Sworn to before me, this 20
day of Sep, 1967

of New York
31-6522035
Qualified in New York County
Commission Expires March 30, 1968

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

SYNESTER BRADLEY, 1492 Longfellow Avenue, Bronx, New York, individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

MITCHELL I. GINSBERG, individually and as Commissioner of the Department of Social Services, City of New York; GEORGE K. WYMAN, individually and as Commissioner of the Department of Social Welfare of the State of New York; and PAUL HECHT, individually and as Special Investigator for the Bureau of Public Assistance of the Department of Special Services, City of New York,

Defendants.

---X

ANSWER

67 Civil 3047

The defendant George K. Wyman, Commissioner of the State of New York Department of Social Welfare, by his attorney LOUIS J. LEFKOWITZ, Attorney General of the State of New York, answers the complaint as follows:

FIRST DEFENSE

The investigation of plaintiff's eligibility for continued welfare assistance was, upon information and belief, made in response to a complaint and conducted at such time and place and in such a manner as was reasonable under the circumstances and consistent with both state and federal law and federal constitutional provisions.

SECOND DEFENSE

The complaint fails to state a claim upon which relief against the defendant Wyman can be granted because the practices and policies of the defendant Wyman are in all respects in accordance with the requirements of federal law and regulations.

THIRD DEFENSE

The complaint fails to state a claim upon which relief can be granted against the defendant Wyman because the policies and practices of the defendant Wyman are explicitly designed to protect the constitutional rights of welfare applicants and recipients.

1. It is the explicit policy of the defendant Wyman that all investigations into eligibility or continuing eligibility shall be conducted by lawful means without infringing upon the individual's civil rights.

2. It is the explicit policy of the defendant Wyman that under no circumstances shall force, threat of force or false statements be used to obtain entry into the home of an applicant or recipient or to obtain evidence of any nature.

3. It is the explicit policy of the defendant Wyman that all investigations must be conducted in a manner that will not violate the applicant's or recipient's right of privacy or dignity, or harass him, or violate his constitutional rights.

4. The contention that the individual defendant Hecht on one occasion acted in a manner inconsistent with the stated policies of the defendant Wyman is insufficient to state a cause of action for injunctive or declaratory relief against the authorized policies of the defendant Wyman or to establish the requisites for a class action.

FOURTH DEFENSE

The investigatory practices and policies authorized by the defendant Wyman are based upon federal policy requirements, are reasonable and necessary for the sound administration of the welfare system and are not violative of any statutory or constitutional rights of applicants for or recipients of welfare assistance.

1. Federal and state law require that assistance be given to those who seek it and establish that they qualify for it.

2. It is the responsibility of the local agency to ascertain the need for assistance as well as for continuing eligibility.

3. The primary source of information regarding eligibility must be the applicant or recipient.

4. Both state and federal law impose a continuing obligation upon a recipient to provide the information necessary to verify his continuing eligibility and needs.

5. If a recipient is unwilling or reluctant to have the agency help resolve a question of eligibility, the agency may not be able to determine eligibility and would have no recourse but to terminate assistance.

6. Termination of assistance because of inability to verify eligibility is a necessary concomitant to the requirement that assistance is to be given only to those who establish that they qualify.

7. Informing the recipient of the possibility that assistance may be terminated because of inability to verify eligibility is necessary to insure that the recipient understands the possible consequences of his unwillingness to provide verifying information to help resolve a question of eligibility.

8. Decision by the recipient to cooperate in verifying eligibility after being so informed is not the result of coercion or intimidation by the agency and the recipient's cooperation does not result in an unconstitutional invasion of privacy.

FIFTH DEFENSE

The defendant Wyman denies each and every allegation contained in the complaint except:

1. Denies knowledge or information sufficient to form a belief as to the allegations of the paragraphs numbered "1", "6" and "9" of the complaint;

2. Admits so much of paragraph numbered "2" of the complaint as alleges that plaintiff was at some relevant times receiving assistance as the mother of a needy child but denies any implication that plaintiff was at all relevant times entitled to such assistance;

3. Admits the allegation of paragraph numbered "3" of the complaint that plaintiff brings this action pursuant to Rule 23(a) and Rule 23(b) (2) of the Federal Rules of Civil Procedure;

4. Admits the allegations of the paragraph numbered "4" of the complaint, except respectfully refers the Court to the relevant statutes for their meaning and legal effect;

5. Admits the allegations of the paragraph numbered "5" of the complaint, except alleges that the extent of the defendant Wyman's responsibilities is limited to that set forth in the relevant statutory provisions and respectfully refers the Court to any said statutes for their meaning and legal effect;

6. Admits, upon information and belief, so much of paragraph numbered "7" of the complaint as alleges that the defendant Hecht appeared at the plaintiff's residence on April 27, 1967 and was admitted to the plaintiff's apartment;

7. Admits, upon information and belief, the authenticity of the letters referred to in paragraph numbered "10" of the complaint and attached as Exhibit "A" and "B" to the complaint;

8. Admits the authenticity of the letters referred to in paragraph numbered "11" of the complaint and attached as Exhibits "C" and "D" to the complaint;

9. Admits so much of paragraph numbered "12" of the complaint as alleges that the relevant federal regulations are binding upon state officials administering federally aided programs;

10. Denies knowledge or information sufficient to form a belief as to the allegations regarding plaintiff's personal feelings contained in paragraph numbered "13" of the complaint.

WHEREFORE, the defendant Wyman respectfully prays for a judgment dismissing the complaint.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for defendant
Commissioner Wyman
Office & P.O. Address
80 Centre Street
New York, New York 10013
By:

MICHAEL H. RAUCH
Assistant Attorney General
Telephone No. 488-3285

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MICHAEL H. RAUCH, being duly sworn, deposes and says:

That he is an Assistant Attorney General attached to the New York office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for the defendant Wyman; that he has read the foregoing answer, and knows the contents thereof, and that the same is true to his knowledge, except as to those matters stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

The reason this verification is made by your deponent and not by the defendant Wyman is that the defendant Wyman resides and has his place of business outside of the county and judicial district where the deponent resides and where his office is located, and where this action was commenced.

Michael H. Rauch
MICHAEL H. RAUCH

Sworn to before me this
17th day of November, 1967

Joel H. Sachs
Assistant Attorney General
of the State of New York

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

X

SYNESTER BRADLEY, 1492 Longfellow
Avenue, Bronx, New York, individually
and on behalf of all others similiarly
situated,

Plaintiffs,

vs.

MITCHELL I. GINSBERG, individually
and as Commissioner of the Department
of Social Services of the City of
New York; GEORGE K. WYMAN, individually
and as Commissioner of the State of
New York Department of Social Welfare;
and PAUL HECHT, individually and as
Special Investigator for the Bureau of
Public Assistance of the Department of
Social Services of the City of New York,

Defendants.

X

TEMPORARY RESTRAINING ORDER

Whereas, in the above-named cause it has been made to appear by the verified complaint filed herein, which was on this day of 19 , presented to the Honorable Judge of the United States District Court for the Southern District of New York, that a restraining order preliminary to hearing upon motion for a preliminary injunction should issue, without notice because immediate and irreparable injury, loss or damage will result to the plaintiff before notice can be served and a hearing had thereon, in that Plaintiff's individual right to be free from unreasonable search and seizure and right to privacy as guaranteed by the U. S. Constitution and the Federal Welfare law, 42 U.S.C. 601 and the like rights of others similiarly situated are abridged by Defendant's pattern of conduct and policies on coercing entry into Plaintiff's homes, searching those homes without warrants and without the basis for obtaining warrants and interrogating Plaintiffs about private matters. This injury is irreparable in that there is no subsequent com that the plaintiffs may be subjected to criminal prosecution and other hardships including denial of subsistence from the deprivation of constitutional rights

Notice and a hearing before entering a temporary restraining order should not be required because immediate and irreparable injury will result to applicant before notice can be served and a hearing had thereon.

Now, thefore on motion of Plaintiff

It is ordered that the defendants WYMAN and GINSBERG & HECHT, and each of them, their agents, successors, deputies, servants and employees, and all persons acting by, through or under them or either of them or by or through their order, be, and they are hereby restrained until   from

1. Conducting or attempting to conduct any investigation, interrogation search or other surveillance of the homes, persons, personal effects, property, associates of, or business or personal affairs of the plaintiff or others singularly situated without a valid consent or a legal warrant.

2. Coercing or attempting to coerce plaintiff or others similiarly situated by threat or promise, to allow the entry of defendants or any of their agents, into the residences of plaintiff or others similiarly situated for the purpose of conducting or attempting to conduct any search, investigation, interrogation or other surveillance of plaintiff or others similiarly situated.

3. Conducting or attempting to conduct any search, investigation, interrogation, or other surveillance of the homes, persons, personal effects, property, associates, or business or personal affairs of plaintiff or others similiarly situated without informing the plaintiff and others of their constitutional right to refuse entry, to remain silent, and to be represented by counsel during any interrogation.

4. Using or attempting to use as the basis of any criminal or civil action against plaintiff or others similiarly situated or as the basis of any termination, suspension or reduction of public assistance to plaintiff or others similiarly situated any reports, evidence, or other information deriving from any attempted or completed search, investigation, interrogation or other surveillance of the homes, persons, personal effects, property, associates, or business or personal affairs of plaintff or others similarly situated regardless of whether such searches, investigations, interrogations or other surveillance have been conducted in the past, are being conducted or will be conducted in the future.

This temporary restraint is on condition that a bond be filed by plaintiff herein in the sum of dollars, conditioned that .

Issued at o'clock a.m.

this day of 19 .

District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -

SYNESTER BRADLEY, et al.,
Plaintiffs,

v.

MITCHELL I. GINSBERG, et al.,
Defendants.

- - - - - - - - - - - - - - - - - - - -

Civil Action No. 3047/67

SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

Court Reporters Fees for Transcripts of Deposition Should Be Paid by the United States.

Plaintiff Bradley has been authorized by this court to proceed in forma pauperis, pursuant to 28 U.S.C. §1915. The relevant portion of that statute, so far as the issue of transcripts are concerned, are as follows:

> (a) Any court of the United States may authorize the... prosecution ... of any suit, action or proceeding, civil or criminal... without prepayment of fees and costs...
>
> (c) The officers of the court shall issue and serve all process, and perform all duties in such cases....
>
> (e) Judgement may be rendered for costs at the conclusion of the suit.... If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

The obvious purpose of 28 U.S.C. § 1915, is to make it possible for poor people to assert their rights through the judicial precesses and to render them, if not equal in their ability to assert their claims, at least not incapable through financial disability of asserting them. With that in mind §1915 makes provision for the payment by the United States of the costs of a stenographic transcript or record, the most prominent cost of litigation. There is no statutory indication as to whether this is intended to include stenographic transcripts of examination beforetrial. If, however, the cause has merit and if in the opinion of "voluntary" counsel, such examinations or depositions are vital to the successful prosecution of the poor persons case, the statute should be interpreted as including the cost of transcripts of depositions. If such costs are not to be paid in advance by the United States, the poor litigant is placed on the horns of a dilemma. He must either surrender the"privileges" of pre-trial preparation accorded by the liberalized Federal procedures and regarded as vital by his attorney, or he must request his attorney or another party to"support" the action. The latter practice in so far as attorneys are concerned is precluded from an ethical standpoint, Canons of Professional Ethics #42(ABA, 1966). The requirement of obtaining support from 3rd parties generally is precisely the predicament that §1915 was intended to prevent. These considerations are critical in determining whether the term "stenographic transcript" in 28 U.S.C. §1915 should be interpreted to include the cost of stenographic transcripts of examinations before trial. Also significant is the fact that the United States has a right to recover its costs from the proceeds if the indigent plaintiff prevails. 28 U.S.C. § § 1915 (c), 1920. *Independent Iron Works v. United States Steel Corp.*322 F 2d 656, 678 (9th Cir. 1963); *Nationwide Auto Appraiser Serv. v. Associates of Cas. and S.Co.*, 41 F.R.D.76.

Apart from the question of interpretation of section 1915, however, plaintiff contends that inextraordinary circumstances such as those of an indigent plaintiff seeking to represent a class of indigents, it is within the equity powers of the court to extend the privilege of taking depositions at the expense of the United States. Thus, beyond statutory authority as to "party and party" costs, the allowance of extraordinary costs "as between solicitor and client", including the costs of investigation, preparation and presentation of a civil case have been held to be within the power of the federal courts. Trustees v. Greenough, 105 U.S.527, 26L ED. 1157; Sprague v. Ticonic Bank, 307 U.S. 161,166, 59 S.Ct.777, 780 (1939); 2 Street, Federal Equity Practice §§ 2033-2048. Schauffler v. United Association of Journeymen, etc., 246 F 2d 867 (3rd Cir.1957). Thus in Sprague, plaintiff prosecuted an action at her own expense which would redound to the benefit of others to impress a lien on certain bonds. She then sought to recover extraordinary costs, to wit." counsel fees and other expenses entailed by the litigation, not included in the ordinary taxable costs recognized by statute." Sprague v. Ticonic Bank supra, 307 U.S. at 164, 59 S.Ct. at 779. In reversing a decision by the lower courts, the Supreme Court said:

> "Allowance of such costs in appropriate situations is part of the historic equity jurisdiction of the federal courts... (T)he historic practice of granting reimbursement for the costs of litigation rather than the conventional taxable costs is part of the original authority of the chancellor to do equity in a particular situation". Sprague v. Ticonic Bank supra, 307 U.S. at 166, 59 S.Ct. at 780.

In the present proceeding, in which substantial rights are at issue (Parrish v. Civil Service Commission of County of Alameda, 57 Cal. Rptr. 623 (1967), plaintiff seeks equitable relief by way of injunction on behalf of a class. Doubtless, if she prevails, plaintiff may recover costs "between solicitor and client". But plaintiff and the class she would represent are indigent and so, if she is to have a fair opportunity to prevail, she requires the prepayment of certain costs. Without these, her access to the normal beneficial pre-trial discovery procedures is hindered.

It should also be noted that pre-trial discovery procedures including depositions play an important function in shortening trials, and to making trials:

> "...less a game of blind man's buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent". United States v. Procter & Gamble Corp. 356 U.S. 677, 682-683, 78 S. Ct. 983, 986-987 (1958).

To disallow the use by an indigent of depositions, which denial of payment of fees by the United States is tantamount to, thus would totally frustrate the purposes of the Federal Rules and deny the court as well as the plaintiff of their benefits. See also Hickman v. Taylor, 329 U.S. 495,

Plaintiff contends that 28 U.S.C. 81915 is applicable to such costs but even if it is not, it is within the powers of the district court to "do equity in a particular situation".

Respectfully submitted,

Dated:New York, New York

February 8, 1968

Carl Rachlin
Stephen M. Nagler
John E. Silverberg
David Gilman
150 Nassau StreetRm.1030
New York, N.Y. 10038

Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

SYNESTER BRADLEY, 1492 Longfellow Avenue, Bronx, New York, individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

MITCHELL I. GINSBERG, individually and as Commissioner of the Department of Social Services of the City of New York; GEORGE K. WYMAN, individually and as Commissioner of the State of New York Department of Social Services, and Paul Hecht, individually and as Special Investigator for the Bureau of Public Assistance of the Department of Social Services of the City of New York,

Defendants.

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67 Civ. 3047

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MANSFIELD, D.J.

On November 28, 1967, this Court, upon defendants' consent, signed an endorsement granting plaintiff's motion for an order pursuant to 28 U.S.C. §1915 authorizing plaintiff to prosecute her action and any appeal in forma pauperis and directing that stenographic transcripts or printed records of any proceedings herein, including examination before trial, be

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available to plaintiff at the expense of the United States. The order is modified to the extent of denying the latter application insofar as it authorized the expense of transcripts to be borne by the Government.

The right to proceed in forma pauperis, being statutory, *Hullom v. Kent*, 262 F.2d 862 (6th Cir. 1959), does not authorize free transcripts of depositions. *Beard v. Stephens*, 372 F.2d 685, 690 (5th Cir. 1967); *Perkins v. Rich*, 198 F. Supp. 615 (D. Del. 1961); see *Douglas v. Green*, 327 F.2d 661 (6th Cir. 1964). Since Congress, which is the sole body capable of authorizing such expenditures, has taken no action, this Court is precluded from granting the relief requested.

Although plaintiff argues that the effect of denying such costs would be to preclude exercise of her pretrial discovery rights, it appears that plaintiff's attorneys have thus far been able to proceed through use of a tape recorder and do not require the benefit of Government financial assistance. *Diaz v. Chatterton*, 229 F. Supp. 19 (S.D. Cal. 1964).

The decisions cited by plaintiff, *Trustees v. Greenough*, 105 U.S. 527 (1881); *Sprague v. Ticonic Bank*, 307 U.S. 161 (1939); *Schauffler v. United Ass'n of Journeymen*, 246 F.2d 867 (3d Cir. 1957), deal with the Court's inherent power to award expenses between a party and another party or counsel and do not authorize the award of expenses against a non-party, which would require statutory enactment, not found here.

SO ORDERED.

Walter R. Mansfield
U.S.D.J.

Dated: February 21, 1968.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

SYNESTER BRADLEY, 1492 Longfellow Avenue, Bronx, New York, individually and on behalf of all others similarly situated,

Plaintiff,

-against-

Civil No. 3047/67

MITCHELL I. GINSBERG, individually and as Commissioner of the Department of Social Services of the City of New York; GEORGE K. WYMAN, individually and as Commissioner of the State of New York Department of Social Welfare; PAUL HECHT, individually and as Special Investigator for the Bureau of Public Assistance of the Department of Social Services of the City of New York,

Defendants.

- x

DEPOSITION of defendant PAUL HECHT, taken by the plaintiff pursuant to notice, as adjourned, at the United States Federal Court House, Foley Square, New York, New York, on Friday, March 1, 1968, at 1:30 P.M., before a notary public of the State of New York.

UNITED REPORTING SERVICE
150 NASSAU STREET
NEW YORK, N.Y. 10038

WORTH 2-5331
2-6869

APPEARANCES:

For the Plaintiff:

CARL RACHLIN, ESQ.
150 Nassau Street
New York, N.Y. 10038
By: DAVID GILMAN, ESQ.
STEPHEN M. NAGLER, ESQ., of Counsel

For the Defendants Mitchell I. Ginsberg and Paul Hecht:

J. LEE RANKIN, ESQ.
Corporation Counsel of the City of New York
Municipal Building
New York, N.Y. 10007
By: LUIS NECO, ESQ., Assistant Corporation Counsel

For the Defendant George K. Wyman:

LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the State of New York
80 Centre Street
New York, N.Y. 10007
By: MICHAEL H. RAUCH, ESQ., Assistant Attorney General

Present:

MERRILL CHARLTON, ESQ.

- - - - -

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the within deposition may be signed and sworn to by the witness before any notary public.

PAUL HECHT, having been duly sworn by the notary public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GILMAN:

Q What is your name?

A Paul Hecht.

Q Where do you live?

A 5440 Netherland Avenue, Bronx 10471.

Q Mr. Hecht, could you summarise for us your educational background?

A A.B., Brooklyn College; some courses at the New York School of Social Work.

Q The courses you took at the New York School of Social Work, is that for a degree candidate?

A I'm sorry.

Q For a master's degree in social work,or a doctorate?

A They were matriculated courses, yes.

Q Could you tell us what you majored in in Brooklyn College?

A Sociology, social sciences.

Q Could you briefly summarise your work experience prior to working for the Department of Social Services?

A Yes. I worked for the YMHA, Williamsburgh, as a social worker; I worked for the YMHA, Boro Park, as a social worker.

That constitutes my work experience prior to the Department of Social Services.

Q Could you tell us approximately how many years you worked on each one of these jobs?

A One year at Williamsburgh and approximately two and a half years at Boro Park.

Q How long have you been with the New York City Department of Social Services?

A Approximately 11 years.

Q In the 11 years that you were with the New York City Department of Social Services, in what capacity were you in the New York City Department of Social Services?

A Caseworker.

Q You have been a caseworker for 11 years?

A Yes.

Q Any particular division or unit?

A The Bureau of Public Assistance.

Q Were there any particular circumstances surrounding your leaving your Williamsburgh and Boro Park jobs?

A Yes.

MR. NECO: I will object. Your question is phrased so that it calls for a conclusion on his part.

Secondly, I don't see how that would be relevant to the issues.

MR. GILMAN: I will rephrase my question.

Q Did you voluntarily leave your job with Williamsburgh?

MR. NECO: Objection again. I don't see how that is relevant to the issues raised in the complaint.

Q Mr. Hecht, have you had any special assignment during your 11 years as a caseworker with BPA?

MR. NECO: I will object to that. Narrow it. If you want it year by year, all right.

Q In the last two years have you had any special assignment? Have you been assigned to any special unit to do any special work for BPA?

A Yes.

Q Can you tell us what that is, what you did?

A Yes. I am a member of the Special Unit of the Bureau of Public Assistance.

Q How long have you been a member of this unit?

A Almost five years.

Q What is the nature of your job with this unit?

A The nature of our job is to review all cases that come to the attention of the Commissioner's office that require special attention. That is, the New York City Department of Social Services Commissioner.

Q Could you tell me what you mean by "special attention"?

A Yes. Any situation involving a recipient of benefits from the Department of Social Services which ordinarily could not be handled by the caseworker in the local service center.

Q Give me an example of the type of work you do that couldn't be handled by the worker in the local center.

A An example of a nine-year-old child, the son of a public assistance recipient, who raped an eight-year-old girl and had to appear in Juvenile Court, where I was assigned to go as a representative of the Department to protect the child's interest; a problem about a specific case raised by any elective government official, such as the Governor of the State of New York or the District Attorney or the Mayor; problems of severe child neglect; problems of illegal practices, either upon or by public assistance clients.

Does that cover it?

Q Is there anything more you would like to say about it?

A That about sums it up.

I could think of many more examples if I would go on.

Q If I understand you correctly, you do an investigation of a particular client that is brought to the attention of the Bureau of Public Assistance, be it eligibility or child neglect.

A Depending on what the nature of the case is.

Q If it was a problem of eligibility, you would do an investigation?

A We seldom get cases that there are problems of eligibility. This is determined between the caseworker and the client.

Q If there was a question, for instance, of concealment of income.

A If it is complained to some government official, who then contacts our Commissioner for his attention, it would then come to the attention of my unit.

MR. NECO: Why don't you ask him specifically about the Bradley case.

Q If there was a situation, for instance, of a complaint that was made to the Department that there may be a welfare recipient that was defrauding the Department, this would be the kind of case that would come to your unit for investigation?

A Possibly. If it is made to the Department alone, not necessarily.

Q If it is made to a government official?

A If it is made to the Commissioner.

Q When you were assigned to the special investigating unit did you receive any special training?

A No.

I'd like to change that answer. When you say "special training," do you mean a training course prior to entering the unit?

Q A training course either prior or subsequent.

A I received no training course prior to entering the special unit. When I arrived in the special unit I was, of course, continuously under supervision and training by my supervisor.

Q This training is different than the type of training you had when you were working as a caseworker in the center?

A Yes.

Q Can you tell me about how long you were in training subsequent to coming to the special investigating unit?

A Subsequent?

Q Yes.

A I wasn't in any training. Subsequent to coming to the unit I received no special training. Once I came to the unit I received training.

Q For about how long?

A It is continuous. It isn't a course; you are constantly under supervision of your supervisor, where you discuss problems, methods of handling them, et cetera. It goes on continuously.

Q Who determines whether your special unit will take a particular case?

MR. NECO: If he knows.

MR. GILMAN: Of course if he knows.

A My experience is that these cases are assigned to us from the Commissioner's office.

Q In other words, the case comes directly from the Commissioner's office to your desk?

A No.

Q Who makes the determination?

MR. NECO: I will have to object at this point. This seems to be going far afield. We are dealing with a specific situation. There are certain allegations in the complaint, having to do with Synester Bradley herself, and I don't see any relevance whatsoever on the question that you are asking, to the Bradley case.

MR. GILMAN: There is also reference in the complaint to a class action.

MR. NECO: The class action --

MR. GILMAN: This is a deposition. It is part of our right for disclosure of information to help us in our case.

MR. NECO: If you get a class-action order, then I would have no hesitation whatsoever to going into the question of the class.

First of all, you haven't procured an order designating this to be a class action.

Secondly, I don't see any elements in this that would make it a class action.

MR. NAGLER: The point of the question is that this would be relevant as to whether or not this is a class action.

MR. NECO: I don't see it.

I will allow a few more questions in this, if you are a little more specific. But as far as we are concerned, we will not get anything about a class action.

A The letter of complaint is received in the

Commissioner's office from various sources, as previously described. The letter is then forwarded to the Bureau of Public Assistance, if it is a Bureau of Public Assistance case as opposed to a Child Welfare case. The letter is then sent to the special unit; the special unit reviews the letter of complaint and then requests that the case be sent to the special unit.

Q Who in the special unit reviews the case to see if it is going to be assigned to a particular caseworker?

A The unit supervisor.

Q Your unit supervisor's name is?

A Is now or was then?

Q Was then.

A Rachel Rauch.

Q Who is it now?

A Mary Auerbach.

Q Do I understand you correctly that the case, before it comes to you, is approved for you by Rachel Rauch?

A You use the word "approve."

MR. NECO: He did not say it would be approved. If you will read the record, you will see what he said.

Q The case is deemed appropriate for your unit by Mrs. Rauch?

A It is deemed appropriate for review by the special unit. There is no special way it would come to me or any other member. It is purely by chance.

Q After the case is approved by the special unit, will you tell us how it is delegated out to the individual caseworkers.

MR. NECO: I will object at this point, again on the question of the relevance of this.

If you want to get to the situation of Bradley, that is one thing. It is still outside the borders of the issues as claimed in the complaint and answers.

MR. GILMAN: It is important for us to establish exactly how the Bradley case came to Mr. Hecht's attention and exactly who approved it.

MR. NECO: It is not relevant who approved it. There is nothing in the complaint that deals with whether the approval was or was not arbitrary or was or was not lawful.

MR. GILMAN: The Federal Rules are very liberal and we have a great deal of leeway.

MR. NECO: If you want to turn this into a class action without an order to do so, I will not do it unless so ordered by the Court.

MR. NAGLER: I think we will have to, at some point, list these questions and go to Court.

Q Mr. Hecht, when did you first become aware of the Bradley situation?

A I wish you would define what you mean by "situation."

Q When did you first know that the special unit had a complaint with reference to Mrs. Bradley?

A When the case was assigned to me.

Q When was that?

A Approximately in the latter part of April.

Q Who assigned it to you?

A The unit supervisor.

Q Her name was?

A Rachel Rauch.

MR. NECO: The reference to April is April 1967.

MR. GILMAN: It is so stipulated.

Q Do you know who assigned the case to Mrs. Rauch?

A No.

Q Did you ever know Mrs. Synester Bradley before this case was assigned to you?

A No.

Q Had you ever heard the name Synester Bradley before?

A No.

Q For what reason was the case assigned to you?

A For review of the complaint.

Q What complaint was made?

A The complaint was made that a person was receiving public assistance for the care of a child while the child was not in the home but, as a matter of complaint, out of the State, and that the recipient also was employed.

Q Was this a written complaint?

A Yes.

Q In the form of a letter?

A Yes.

Q Was this letter given to you?

A It is part of the case composition.

Q Did you see that letter?

A Yes.

Q Do you have that letter in your files?

A Copies.

Q You have copies of the letter in your files.

A Yes.

Q Do you know where the original is?

MR. NECO: I will object to that. As you know, there is a specific statute, which is Social Welfare Law, Section 136, subdivision 2, which provides that communications and information relating to a person receiving public assistance or care shall be considered confidential and may not be divulged except to certain specified persons or agencies, and there is no exemption made for plaintiffs or their attorneys in that law.

MR. GILMAN: We have a history sheet from the New York City Department of Welfare which is part of that case record, which was given to us in response to our notice to produce documents. I assume that is also part of the confidential case record.

MR. NECO: I would imagine it to be so.

MR. GILMAN: The question is relevant to the issues raised in the complaint.

MR. NECO: I cannot waive a statutory bar. That is something that you will definitely have to get an order from the Court for, to require the production of any records.

Q Do you know where the original of that letter is?

A No.

MR. NAGLER: May I say at this point -- may we stipulate that question as a question on which we will have to go before the Court, and the questions following that question, because we definitely have an issue of law on this point.

MR. NECO: You have asked for the production of that. As to that, we are objecting.

Also, as to any substance, the substance of the letter or any matter related directly to that letter, or any information in this welfare recipient's file, we will not produce any information.

MR. NAGLER: Even if they are relevant to the action?

MR. NECO: Even if they are essential to the action; under Section 136.

MR. NAGLER: Since at this point we will have a disagreement with regard to the relevancy of certain questions, as well as an issue of law, at some point, either this afternoon or subsequently, we will have to make arrangements to go before the Court for a determination as to whether the questions related thereto should be answered.

I suggest that, as far as questions with regard to the case record are concerned, that any objections you make we note in the record and stipulate those in before the Court at our earliest convenience.

Is that acceptable?

MR. NECO: Surely.

Q Mr. Hecht, was the letter of complaint signed?

A No.

MR. NECO: Objection.

Q Mr. Hecht, how many written complaints were made in this particular case?

MR. NECO: Objection.

Q Does the case record reveal any oral complaints that were made in this matter?

MR. NECO: Objection.

Q Do the records indicate who sent the complaint, or any reference of who sent the complaint to Mrs. Rauch?

MR. NECO: Objection.

Q Is there any reference in the case record as to whom the complaint was sent to?

MR. NECO: Objection.

I will have a continuing objection to any question dealing with the case records.

MR. NAGLER: This is precisely what I was talking about before.

Q Do you know the date of this complaint?

MR. NECO: Will you specify what complaint you are talking about.

MR. GILMAN: The complaint that went to the

Commissioner's office, that was sent down to the special investigating unit, which precipitated it being assigned to Mr. Hecht.

MR. NECO: The written complaint?

MR. GILMAN: That's right.

MR. NECO: Objection.

Q Did you have a discussion with Mrs. Rauch with reference to these complaints?

MR. NECO: Objection.

Q Did you have a discussion with the client in reference to these complaints, prior to your visit?

MR. NECO: Objection.

Q Did you have a discussion with the caseworker in the center in reference to these complaints?

MR. NECO: Objection.

Q Did you have any written correspondence with relation to this complaint, either with the caseworker or any other City official?

MR. NECO: Objection.

MR. NAGLER: If we may, for a moment: Do I understand, Mr. Neco, that the report previously given to us, made by Mr. Hecht, which we believe to be incorporated in his record, and any questions based on that report or towards the elaboration of details on that report, are going to be objected to by you pursuant to the section of the Social Services Law of the State of New York?

MR. NECO: I will have to see how each question fits into that particular section of the Social Services Law.

Q After you received this Synester Bradley case did you read her case record?

A Yes.

Q Did you read the entire case record?

A Yes.

Q Did you discuss this case with the caseworker?

A No.

Q Did you discuss it with anybody else at the welfare center?

MR. NECO: What welfare center are you talking about?

MR. GILMAN: At the local welfare center.

MR. NECO: Would you be a little more specific. Off the record.

(Discussion off the record)

Q Did you discuss this case with anyone else at the Tremont Welfare Center?

A At what point?

Q At the point that the case was assigned to you.

A No.

Q At any time subsequent to today have you discussed this case? This is prior to the visit that you made. Did you discuss this case with anyone at the welfare center?

A No.

Q After you visited Mrs. Bradley did you discuss this case with anybody at the welfare center?

MR. NECO: He answered that already.

MR. NAGLER: The previous question was prior to the visit. Now it is subsequent to the visit.

A At what point?

Q After you visited Mrs. Bradley did you discuss this case with anybody at the welfare center?

A Since I visited, to the present date?

Q That's right.

A I don't know.

Q Do you have any written correspondence with anyone from the Tremont Welfare Center concerning this case?

A No.

Q Did you ever have an oral discussion with any other employee of the Department of Social Services concerning this case?

MR. NECO: Objection.

Clarify what period you are talking about.

MR. GILMAN: At any time subsequent to the visit.

MR. NECO: What visit?

MR. GILMAN: To the visit of --

Strike the question. I withdraw it.

Q From the time that the Bradley case came to your attention to the time that this court action was filed did you discuss this case with any employee of the Department of Social Services?

A Yes.

Q Can you tell us who?

A My supervisor.

Q Can you identify her?

A Rachel Rauch.

Q Anybody else?

A Someone in the legal section.

Q Will you identify that person.

A I'm sorry, I don't remember the name.

Q Was it a lawyer?

A Yes.

Q Was it a man?

A Yes.

Q Do you remember the unit?

A No.

Q Do you remember the man's first name?

A No.

Q Would it refresh your recollection if I said to you that the man you spoke to was Mr. Hy Shelkowitz?

A Shelkowitz sounds familiar.

Q Do you know if Mr. Shelkowitz is in the unit dealing with criminal matters, in the New York City Department of Social Services?

MR. NECO: Objection. I don't see how that has any bearing on this case.

MR. NAGLER: Mr. Neco, the very heart of the complaint deals with the question of search, and part of the theory is the question of the investigative action preceding the police officer.

If the discussion with Mr. Shelkowitz was in his capacity as a member of the unit dealing with criminal prosecutions for such things as welfare fraud, then obviously the question is most relevant, most directly relevant.

MR. NECO: All right; I will let him answer.

(The reporter read the pending question.)

A No.

Q Did you know that at the time you discussed it with him?

A No.

Q Will you please tell us what was the essence of the conversation you had with Mrs. Rauch concerning Mrs. Bradley's case.

MR. NECO: Objection. Section 136, subdivision 2.

MR. GILMAN: It refers to the case record.

MR. NECO: It says: "Any communication and information relating to a person receiving public assistance or care obtained by any public official, service officer or employee in the course of his work shall be considered confidential and, except as otherwise provided in this section, shall be disclosed to the New York State Board," et cetera.

MR. NAGLER: We have the same issue, then.

Q Can you tell us what was the essence of your conversation with Mr. Shelkowitz concerning Mrs. Bradley's case?

MR. NECO: The same objection.

Q Is it normal operating procedure to discuss particular cases that are assigned to you with members of the legal division?

A Depending on the case.

Q Have you had discussions with Mr. Shelkowitz before on other cases?

A With Mr. Shelkowitz specifically?

Q That's right.

A No.

Q With other members of the legal staff?

A Yes.

Q Can you tell us the names of those people?

A No.

Q Did you ever have a discussion with Mr. Stechenberg of the legal division?

MR. NECO: Do you know Mr. Stechenberg?

A Not to my knowledge.

Q Did you ever have a discussion with Mr. George Antonello?

These are attorneys with the Department of Social Services, in the criminal division.

A Not to my knowledge.

Q Have you ever spoken to any attorneys at the criminal division of the New York City Department of Social Services?

A I am not aware of what is the criminal division.

Q Are you familiar with the structure of the legal department of the New York City Department of Social Services?

A No.

MR. GILMAN: Off the record.

(Discussion off the record)

DIRECT EXAMINATION

BY MR. NAGLER:

Q In the course of your work, have you ever had a discussion about either Mrs. Bradley's case or a case similar to that of Mrs. Bradley's with a Mr. Hy Lev?

MR. NECO: Identify him.

MR. NAGLER: He is head of the unit of the legal division of the Department of Social Services, charged with responsibility for prosecution of cases in the criminal courts.

A Not to my knowledge.

Q Did you ever have a discussion with a gentleman with white hair, who moves about in a wheelchair?

I am attempting to describe Mr. Lev.

A Not to my knowledge.

Q Are you familiar with the structure of the legal department at the Department of Social Services?

MR. NECO: He answered that.

A No.

Q Was there any particular reason you discussed Mrs. Bradley's case with Mr. Shelkowitz as opposed to any other lawyer?

MR. NECO: Objection, on the same grounds: Section 136.

Q Did anyone tell you to discuss Mrs. Bradley's case with Mr. Lev?

MR. NECO: Hold it. He didn't say he discussed the case with Mr. Lev.

MR. NAGLER: Withdrawn.

Q Mr. Shelkowitz.

A Mr. Shelkowitz asked that I come to his office.

Q Do you have any knowledge of how Mr. Shelkowitz obtained knowledge of the case?

A No.

Q Do you have any knowledge of how Mrs. Rauch obtained knowledge of the case?

MR. NECO: He already stated. He said that the case was assigned to him by Mrs. Rauch.

MR. NAGLER: Does he have any knowledge of how Mrs. Rauch obtained knowledge of the case.

A May I ask for clarification: You mean how the case came into the unit?

Q Right.

A It came to us from Bureau of Public Assistance.

Q Do you know who in BPA?

A No.

Q Does Mrs. Rauch have a supervisor?

A Yes.

Q Who is that?

A I am not sure, because they changed directors. At the time, I believe it was a woman, whose name I don't recall. There is an overlap there.

Q What is the title of the woman you don't recall?

A Director, Bureau of Public Assistance.

Q Is there an assistant director of the Bureau of Public Assistance?

A Yes.

Q Is she in direct line of command above Mrs. Rauch, if you know?

A I don't know.

Q Do you know whether there is anyone in the chain of command between Mrs. Rauch and the director of the Bureau of Public Assistance?

MR. NECO: What period are you talking about now? At this period there is nobody, because Mrs. Rauch isn't there.

MR. NAGLER: At the period during which Mrs.

Rauch was the supervisor of your unit.

A I don't know.

Q Do you know where Mrs. Rauch is now?

A Yes.

Q Will you tell me where.

A She is in the Bureau of Personnel.

Q Can you tell me what Mrs. Rauch's full title was at the time she was your unit supervisor?

A Service case supervisor.

Q Was she service case supervisor in charge of anything, or is there any further title?

A Not to my knowledge.

Q I believe you received a subpoena duces tecum requesting that you bring along your records with regard to your dealings with the Bradley case.

MR. NECO: At this point we will not produce those records.

MR. NAGLER: This was a preliminary question. My next question will deal with that.

Q You did receive a subpoena duces tecum?

A I don't recall receiving it.

MR. NECO: I think it was probably served upon J. Lee Rankin, the attorney for defendants Ginsberg and Hecht.

MR. NAGLER: Will you stipulate that such a subpoena was received in fact?

MR. NECO: It was received, yes.

I would say that we do have a two-page notice to take deposition, which I show you now, and ask if this is the one you are referring to.

MR. NAGLER: Yes, it is.

MR. NECO: It does not appear to be a subpoena.

MR. NAGLER: This is a notice to take deposition. But I believe a subpoena duces tecum was also served. It is within the Federal Rules.

MR. NECO: Was a subpoena duces tecum served?

MR. NAGLER: I think we can stipulate that a notice to take deposition was served and certain papers were noticed in that notice to take deposition.

MR. NECO: I am unclear as to whether a subpoena has been served. Has a subpoena duces tecum been served?

MR. NAGLER: I am not certain. I am not absolutely sure.

MR. NECO: I want to have a little bit of clarification as to whether the subpoena duces tecum has been served.

MR. GILMAN: Off the record.

(Discussion off the record)

MR. NAGLER: Both Mr. Gilman and I are uncertain as to whether a subpoena duces tecum was served; and to the best knowledge of defendants attorney, no subpoena has been served.

However, in the notice to take deposition it is consented and agreed that certain documents are to be brought in.

MR. GILMAN: Off the record.

(Discussion off the record)

MR. NECO: You asked for a stipulation as to certain documents that apparently have been given to you. I have no personal knowledge that these documents were given to you.

Q Mr. Hecht, have you in fact brought with you any report or notes taken by you in connection with your investigation of the plaintiff?

MR. NECO: Mr. Hecht has not brought any such notes. These are all, in our opinion, a disclosure.

MR. NAGLER: You have the same objection based on Social Services Law, Section 136?

MR. NECO: Yes.

MR. NAGLER: The same would be applicable to item 2 in the notice of deposition?

MR. NECO: Yes, the same objection.

MR. NAGLER: The same would be true of all written reports prepared by Mr. Hecht in connection with investigations conducted by him for the Department of Social Services of the City of New York and its predecessors relating to other persons than Mrs. Bradley?

MR. NECO: That does not seem to be the third provision entirely: "All written reports prepared by him in connection with the investigation conducted by him for the Department of Social Services of the City of New York and its predecessors." And penned in "since January 1, 1965."

The same objection.

Q Have you brought with you, Mr. Hecht, a copy of all regulations, manuals, directives, memoranda, bulletins, informationals, executive orders, procedurals and training materials relating to the conduct of investigations conducted by you or the Department of Social Services?

MR. NECO: We do not have an objection as to Social Services Law 136 with regard to this. We can make them available to you. These, I would imagine, are public documents.

MR. NAGLER: In so far as so much of it is concerned that is public documents you will make available, but any directives --

MR. NECO: Anything that is a public document. Frankly, I don't see anything that would be covered by 136; but anything that is not covered by 136 we will, of course, make it available to you.

MR. NAGLER: We have no dispute as to that.

Q Have you brought with you a list of all persons investigated by you since January 1, 1965?

MR. NECO: The same objection: Section 136, subdivision 2, of the Social Welfare Law.

Q Have you brought with you any statistical reports prepared by you or by the Department since January 1, 1965 with respect to investigations conducted by you or the Department?

MR. NECO: Off the record.

(Discussion off the record)

MR. NECO: If the statistical reports involved in provision No. 6 do not have information which would be covered by Section 136, subdivision 2, we would be quite happy to make them available to you.

We would like to investigate those reports and see what the status may be under the provisions of 136.

MR. NAGLER: So we do not know at this point whether we have a dispute.

MR. NECO: We will agree to some future date when we will sit down and make available whatever we have to you.

Q Is there any particular group of attorneys from those employed by the Department of Social Services of the City of New York with whom you have occasion to consult on either Mrs. Bradley's case or on cases similar to that of Mrs. Bradley?

MR. NECO: I would say that, with regard to Mrs. Bradley's case, I will allow him to answer. With regard tocases similar to Mrs. Bradley, this is a class action. Please rephrase your question.

MR. NAGLER: Here it is not only the relevancy as to a class action, but in terms of custom and practice.

MR. NECO: If you want to phrase it in terms of custom and practice, fine.

MR. NAGLER: I will withdraw the previous question.

Q Is it your custom and practice, Mr. Hecht, to conduct discussions with any particular member or members of the legal department with regard to the class of cases that come to your attention similar to that of Mrs. Bradley, or Mrs. Bradley's case specifically?

A Only when Legal requests a discussion.

Q Do you ever initiate such discussions with the legal division?

A No.

Q When you are contacted by the legal division to discuss cases in the category of Mrs. Bradley's case, or Mrs. Bradley's case itself, is there a particular attorney or group of attorneys who contact you?

In other words, is it always the same attorney or attorneys that contact you?

MR. NECO: Ask him how many times he has been contacted with regard to Mrs. Bradley.

MR. NAGLER: I think that may be my next question. I want an answer to this in terms of custom and practice.

A No.

Q It is different lawyers that contact you with regard to different cases?

A Yes.

Q Do they contact you directly or do they contact you through your supervisor?

A Through my supervisor.

MR. NECO: Before you go further, I would also like to note an objection to the material, the documents and papers, et cetera, requested in your notice to take deposition.

My objection goes to provisions No. 3, 4 and 5, on the ground that this is not as yet a class action.

MR. NAGLER: Do you include 4 in that?

MR. NECO: I'm sorry. 3 and 5. I will withdraw the objection to No. 4. But 3 and 5 I object to on the ground that those are provisions that seem to go to the issue of the class action.

Apart from the objection pursuant to Social Welfare Law 136, I object on the ground that this would seem to go to a question of class action. We will not produce those unless we get a class-action order from this Court.

There are two objections to those two provisions, 3 and 5.

Q Mr. Hecht, on cases of the category of that of Mrs. Bradley's case, by how many attorneys have you been contacted?

MR. NECO: You are getting away from custom and practice now. You are getting to specific cases, undoubtedly. Again I will object on the ground that

that opens the door to a class action. Unless we have the class-action order, I am going to instruct Mr. Hecht not to answer those questions.

MR. NAGLER: We will consider that question contested as well.

Q In your discussion with Mr. Shelkowitz, did you discuss the possibility of criminal prosecution?

MR. NECO: Objection.

MR. NAGLER: We have another dispute on that, I gather, under the Social Services Law section that you alluded to earlier.

MR. NECO: Certainly.

Q Is it common practice for attorneys in the Department of Social Services to contact you with regard to cases similar to that of Mrs. Bradley?

MR. NECO: I am going to object to that. He wouldn't know what the common practice of the attorneys is. He can only testify as to what his common practice might well be.

MR. NAGLER: I will rephrase it in terms of his common practice with regard to discussions with attorneys, or common departmental practice for him to discuss things with attorneys, to the best of his knowledge; as to departmental custom and practice.

MR. NECO: Off the record.

(Discussion off the record)

Q To the best of your knowledge, Mr. Hecht, is it departmental practice and custom for caseworkers in the special unit,or special investigations unit,to have discussions with certain attorneys in the Department of Social Services with regard to cases such as that of Mrs. Bradley?

MR. NECO: I am going to object.

He can testify as to what his own practice is. I doubt whether he can testify as to what the practice of the others is.

All right, I will withdraw my objection. I will let him answer.

A In five years, one other time.

Q One other time that you have had discussions?

A Yes.

Q How many cases of a similar nature as that of Mrs. Bradley have you had in that five-year period?

MR. NECO: He has answered that. He said one other case.

MR. NAGLER: I believe this is a different question.

MR. NECO: I will object. Please rephrase your question. I am not sure what you mean by a case of similar nature.

MR. NAGLER: Cases of alleged fraud.

MR. NECO: Rephrase the entire question with that element of alleged fraud.

Q How many cases of alleged fraud have you had in the five-year period in which you have been working for the special investigations unit?

MR. NECO: I will object to that.

How many cases of alleged fraud he had?

MR. NAGLER: Yes.

MR. NECO: I will object to that. You are trying to make this into a class action again.

Q How many people are there in your unit, Mr. Hecht?

A Nine.

MR. NECO: At this time?

MR. NAGLER: At this time.

Q Does that include the supervisor?

A Yes.

Q What are the titles of the other eight people in the unit, other than the supervisor?

You have already answered that with regard to yourself. The other seven people, with the exception of the supervisor and yourself.

A There are five caseworkers, two stenographers, one unit clerk, one supervisor.

Q Is it your custom and practice to keep contact, in cases of alleged fraud or alleged mishandling of welfare funds that come to your attention -- to keep contact with persons working at different welfare centers?

MR. NECO: I will object to that on the same grounds.

MR. NAGLER: This is in terms of custom and practice.

MR. NECO: You are trying to open the door to a class-action question here, and I am going to object to that and instruct him not to answer.

It hasn't been established that he considered this case to be a fraud case.

Q Of the categories of cases that you described at the outset, Mr. Hecht, in which category would you place Mrs. Bradley's case or would you have placed it at the time you received it?

MR. NECO: Does he recall what category you are talking about?

Do you recall?

A We do not categorize cases.

Q You made an allusion, at the outset, to government officials referring cases to you. What did you mean by "government officials"?

A Anybody who runs a government office of some stature.

Q Would a caseworker fall within that category?

A No.

Q Would a unit supervisor in a welfare center fall within that category?

A No.

Q Would a case supervisor at a welfare center fall within that category?

A No.

Q Would a senior case supervisor --

MR. NECO: I will object to this point. You are asking for a legal conclusion now, I think. I am not quite sure what his opinion or conclusion might be. It would be improper. It is a legal conclusion that you are asking for.

Q Do you know whether there is a relation that specifies what persons may or may not -- which delineates what persons may or may not refer cases to the special investigations unit?

A There is no material by which -- there is no standards by which cases are referred to the special unit.

MR. NECO: Are you talking about some sort of directive?

Q Regulation, directive, manual, bulletin, et cetera.

A I know of no such directive, manual, et cetera.

Q Did you ever, on any occasion, discuss Mrs. Bradley's case with any person then or subsequently employed at the Tremont Social Services Center?

A Not to my knowledge.

Q What do you mean, not to your knowledge?

A I don't --

MR. NECO: That answer speaks for itself. Not to his knowledge.

Q Do you mean that you discussed the case with other persons than Mrs. Rauch or Mr. Shelkowitz who were not identified to you as working at the Tremont Social Services Center?

A No, I don't mean that at all. I mean that there have been occasions to discuss the case, and I don't know if any such person currently is employed at Tremont or not.

Q Or was then employed at Tremont.

A No.

Q With whom else did you discuss the case, other than Mrs. Rauch and Mr. Shelkowitz?

MR. NAGLER: I would like to withdraw that question.

Q Did you ever discuss the case with any other employee of the Department of Social Services, other than Mrs. Rauch or Mr. Shelkowitz, who had an official relation to the case?

MR. NECO: Objection. "Ever."

MR. NAGLER: From the time that the case came to his attention until the time that this action was commenced.

A That this action was commenced, no.

MR. NECO: Merrill Charlton, who is an attorney for the Department of Social Services.

Q Did you ever overhear a conversation between Mrs. Rauch and any person in the category described in the last question?

MR. NECO: I object. What kind of a conversation are you talking about? He might have heard thousands of conversations. Are you talking about Mrs. Bradley?

MR. NAGLER: A conversation between Mrs. Rauch and any other officials of the Department having some official jurisdiction over Mrs. Bradley's case.

MR. NECO: You are talking about a conversation relating to Mrs. Bradley?

MR. NAGLER: Relating to Mrs. Bradley's case.

A No.

Q Did you ever overhear a conversation between Mr. Shelkowitz and any other official in the category just described in the last question?

MR. NECO: Objection again. Give us a period of reference, a period of time.

MR. NAGLER: In the period described in the preceding question.

A No.

Q Did you ever hear a discussion between any two officials having jurisdiction with regard to Mrs. Bradley's case?

MR. NECO: If he knows that they were discussing Mrs. Bradley's case.

MR. NAGLER: Of course.

A No.

MR. NAGLER: Off the record.

(Discussion off the record)

(Short recess taken)

BY MR. GILMAN:

Q Mr. Hecht, if my recollection serves me correctly, there was a written complaint that was made with reference to Mrs. Bradley, and, based on that complaint, the case filtered down eventually to your desk. Is that correct?

A Yes.

Q You were charged with the responsibility for investigating as to the veracity of that complaint.

A Yes.

Q And this case was brought to you for investigation sometime in April 1967; is that correct?

A Yes.

Q There were three allegations that were made in that complaint; is that correct?

MR. NECO: What complaint are you talking about?

MR. GILMAN: The written complaint.

A I don't recall.

Q Do you have any record from which you can refresh your recollection as to exactly what the complaint stated?

MR. NECO: There is a record. Even if he were to refresh his recollection, I would object to his communicating any information as to what was in that letter of complaint, based upon Section 136 of the Social Welfare Law.

Q After this case was put on your desk what did you do, Mr. Hecht, besides investigating?

A I read it.

Q You read what?

A I read the case record, the letter of complaint.

Q Was there anything else that you read?

A No.

Q Did you make any telephone calls?

A No.

Q Did you write any letters?

A No.

Q Did you have any discussions?

MR. NECO: With whom? What period of time?

MR. GILMAN: After the case was put on his desk and after he had read the complaint, read the case record, did he have any discussions with any employees of the Department of Social Services.

MR. NECO: Is that prior to seeing Mrs. Bradley?

MR. GILMAN: That's right.

A No.

Q Did you discuss this case with Mrs. Bradley prior to your visit?

A No.

Q Did you have any discussions with anybody who represented Mrs. Bradley, prior to your visit?

A No.

Q Did you make any attempt to contact Mrs. Bradley concerning this complaint?

MR. NECO: Attempt to contact in what way?

MR. GILMAN: Whatever is the normal operating procedure by that unit. I would assume by telephone or letter.

MR. NECO: Establish what the normal procedure is.

Q What is the normal procedure after you have read the complaint and the case record? What do you do next?

A We attempt to determine what degree of truth there is in the complaint.

Q How do you do that?

A In various ways.

Q In what ways do you make a judgment as to the veracity of the complaint?

MR. NECO: Limit that to Mrs. Bradley.

MR. GILMAN: That is what we are talking about, the Bradley case.

Q You told me you read the record, read the complaint. What did you do next?

A Attempted to determine if there was any truth to the complaint.

Q How did you do that?

A Through collateral contacts.

Q Will you explain to me what you mean by collateral contacts.

A Collateral contact is a contact with any source other than the client.

Q Did you make collateral contacts with any source other than the client?

A Yes.

Q Will you tell us who you contacted.

MR. NECO: Objection. It is within Section 136, subdivision 2, of the Social Welfare Law.

MR. NAGLER: That, too, is disputed.

Q What were the results of your collateral contacts?

MR. NECO: Objection. You are asking for a conclusion.

Q What did you do after you made your collateral contacts?

A Visited the client.

MR. NECO: By that, I suppose, is meant Mrs. Bradley.

THE WITNESS: Right. I visited Mrs. Bradley.

Q In other words, it was your opinion that after you had made your collateral contacts a visit was necessary?

A No.

MR. NECO: I will object to that, as to what his opinion was. He has answered the question anyway.

Q Are you required to visit a client if there is a complaint that is made?

A Yes.

Q Therefore, based on this requirement, you visited the client.

A Yes.

Q Could you tell me how many people you contacted collaterally, before you made this visit?

A Two.

Q Are they employees in the New York City Department of Social Services?

A No.

Q I restate the question: Give us the names of the people that you contacted.

MR. NECO: Objection, subject to 136, Social Welfare Law.

MR. NAGLER: There is a dispute on that.

Q Are the names of the collateral contacts and the dates when you made these contacts part of your case record?

A No.

Q Are you required to keep a record of the people that you contact collaterally with reference to a particular case as a normal operating procedure?

A Yes.

Q Is there a special reason that you did not comply with this requirement with reference to Mrs. Synester Bradley?

MR. NECO: Objection. It hasn't been established that he didn't comply.

Let's develop the requirements a little further before he answers that.

I will object to that question until the record shows exactly what the requirement is.

Q Mr. Hecht, you stated that you made two collateral contacts; is that correct?

A Yes.

Q These were made to people who were not in the employ of the New York City Department of Social Services; is that correct?

A Yes.

Q When you make collateral contacts is it part of your normal operating procedure, is it part of your practice in your unit, to keep a record of the names of the contacts and the date when the contact was made?

A Yes.

Q Is there a particular reason why this was not followed in the case of Mrs. Bradley?

A Yes.

Q Can you tell us that reason?

MR. NECO: I am going to object. It says: "All communications and information relating to a person receiving public assistance."

I think I would rather check that out by way of the courts. I have the same objection: 136.

MR. NAGLER: May I say that if his answer deals with some peculiarity in the Bradley case, your objection might be relevant.

MR. NECO: It says "any information." That is very broad. I am a little uncomfortable.

MR. NAGLER: If his reason dealt with custom and practice in the Department, we might clarify that.

Q Did your reason for your not making notations in the record deal with any custom or practice in the Department, or did it deal with some peculiarity of the Bradley case?

MR. NECO: I will allow him to answer in a very broad way.

May I ask him, in general terms, to repeat what he stated to me without getting into any details like touching the Bradley case itself.

MR. NAGLER: We do not waive our rights with regard to those details.

I gather you want to dispute the details.

MR. GILMAN: If you want to ask Mr. Hecht a question at this point that you think will clarify the issue, it is perfectly agreeable.

MR. NECO: How did you contact these collateral contacts?

THE WITNESS: One I met in the ante-lobby of the building.

MR. NECO: What building are you referring to?

THE WITNESS: This is Bradley's building.

MR. NECO: Did you know this person prior to meeting that person?

THE WITNESS: No.

MR. NECO: Did you approach the person?

THE WITNESS: No.

MR. NECO: Can you tell me how you made contact with this person?

THE WITNESS: Yes. He was the landlord. He identified himself as the landlord. He opened the door to let me in.

MR. NECO: What did you do after he let you in?

THE WITNESS: I spoke with him.

MR. NECO: What did you speak about?

THE WITNESS: Mrs. Bradley.

MR. NECO: As to the other person you spoke to, the other contact, where did you meet this other contact?

THE WITNESS: As I was going up the stairs the woman opened the door and asked who I was, and I didn't tell her who I was, but I asked her if she knew Mrs. Bradley, and she said she did.

MR. NECO: Did you then discuss Mrs. Bradley with this woman?

THE WITNESS: I didn't discuss Mrs. Bradley with her. I asked her some questions about Mrs. Bradley.

MR. NECO: Did she answer your questions?

THE WITNESS: Some of them.

MR. NECO: Did you ask this contact for her name?

THE WITNESS: I did.

MR. NECO: Did she give you the name?

THE WITNESS: No, she didn't.

MR. NECO: Did you ask the landlord for the name?

THE WITNESS: I did not.

MR. NECO: I have no further questions.

Q Do I understand you correctly, Mr. Hecht, that you spoke to the landlord and you spoke to a resident in the building prior to your visit to Mrs. Bradley?

A That is correct.

Q Did you have permission from Mrs. Bradley to contact either the landlord or her neighbor?

A I had no contact with Mrs. Bradley.

Q That wasn't the question. Just respond to the question.

Did you have any permission from Mrs. Bradley to contact either the landlord or her neighbor?

MR. NECO: I will object to that. That is very broad.

Are you talking about him personally or the Department?

MR. GILMAN: I am asking him did he have permission from Mrs. Bradley to contact the landlord and the neighbor.

Q Did you, as a special investigator, have permission from Mrs. Bradley to contact the landlord or the neighbor?

MR. NECO: Off the record.

(Discussion off the record)

Q Did you have specific permission from Mrs. Bradley to contact the landlord or her neighbor?

A No.

MR. NECO: When you say "did you have," you are talking about Mr. Hecht having specific permission in his individual capacity or in his capacity as investigator? We are not going to the question whether the Department itself had permission.

MR. GILMAN: That wasn't the question. The question was whether Mr. Hecht had permission, and the answerwas no.

Q To the best of your knowledge, did the Department of Social Services have permission to contact either the landlord or the neighbor?

MR. NECO: I will object to that as asking for a conclusion.

Q Were you told by any superior, either within or without the unit, that you should orcould contact the landlord or the neighbor in regards to Mrs. Bradley?

A Mr. Gilman, my superiors never know in advance who I come across, so they could not tell me specifically not to contact that person or this person.

Q Did you have any general directive from your superiors as to whom you could contact in regards to Mrs. Bradley's case?

A Yes.

Q Can you tell us what that directive was?

A There are two. One is the application blank that the client signs; two, and more recent, is a directive on standards of behavior and practice of the caseworker in making reviews or investigations.

The latter directive states that where there is a question of eligibility, a complaint, that the caseworker may make such collaterals as are deemed necessary to protect the interest of the client.

May I add that I am not quoting verbatim; it is just to the best of my recollection.

MR. NECO: That directive that he was talking about is a directive by Commissioner Ginsberg. It was prior to April of 1967.

Is that correct, Mr. Hecht?

THE WITNESS: I believe so.

MR. NAGLER: We feel that that is irrelevant and we would have it stricken.

MR. GILMAN: Off the record.

(Discussion off the record)

BY MR. NAGLER:

Q Do you have any personal knowledge, Mr. Hecht, of whether Mrs. Bradley gave specific approval for a contact by you before the date on which you spoke to the landlord and the co-resident of the building, for any contact by you or any other person with regard to the content or subject matter of her case?

MR. NECO: There is nothing in the complaint at all to the effect that Mrs. Bradley did not give him this type of permission.

I am, nevertheless, going to allow him to answer.

I merely want to indicate for the record that this is outside the issues of the complaint, but I am allowing him to answer.

A Not to my knowledge.

MR. NAGLER: Off the record.

(Discussion off the record)

BY MR. GILMAN:

Q Did Mrs. Bradley ever give you authorization, after you made these contacts with the landlord and the resident, to contact persons regarding her case?

A No.

I want to change that answer, if I may.

Q Surely.

A I don't know.

MR. NECO: Read that question.

(The reporter read the question.)

MR. NECO: I think the problem here is that you are asking him for some sort of a conclusion.

MR. NAGLER: If such approval was given prior to these contacts or after these contacts, such approval was never communicated to you, Mr. Hecht; is that correct?

THE WITNESS: Not to my knowledge.

MR. NAGLER: Did you ever inform Mrs. Bradley that you were making collateral contacts with persons not employees of the Department of Social Services regarding her case?

MR. NECO: Will you please limit this in terms of time. Before he visited?

MR. NAGLER: From the time the complaint came to his knowledge until this action was commenced.

THE WITNESS: Did I ever get what?

MR. NAGLER: Did you ever tell Mrs. Bradley that you were making collateral contacts regarding her case?

THE WITNESS: No.

Q Mr. Hecht, can you please tell us what you said to the landlord when you spoke to him about Mrs. Bradley's case and what the landlord said to you?

MR. NECO: Objection: Section 136.

Q Did you discuss Mrs. Bradley's case with the landlord, Mr. Hecht?

A I object to your use of the words "discuss with the landlord."

Q Answer the question the best you can.

Did you discuss Mrs. Bradley's case with the landlord?

A No.

Q Did you discuss Mrs. Bradley's eligibility?

A No.

Q Did you mention Mrs. Bradley when you were talking to the landlord?

A Yes.

Q Did you tell him that you were from the Department of Social Services?

A No.

Q Did you tell him that you were from any government agency?

A No.

Q Did you identify yourself at all?

A To the landlord?

Q That's correct.

A No.

Q Did you tell him you were a policeman?

A No.

Q Did you tell him you were a friend of Mrs. Bradley?

A No.

Q Did the landlord discuss with you Mrs. Bradley's tenancy?

MR. NECO: What do you mean by tenancy?

MR. GILMAN: How long she lived there, how much rent she paid.

MR. NECO: Ask one question at a time.

Q Did you discuss with the landlord how long Mrs. Bradley had been a tenant in the building?

A No.

Q What did you say to the landlord and what did the landlord say to you?

MR. NECO: If it deals with Mrs. Bradley, I will object to that as fully within the provisions of Social Welfare Law 136.

Q Did you have a discussion with another resident in the building, concerning Mrs. Bradley?

A Yes.

Q What was the essence of that discussion?

MR. NECO: Objection, as to 136 of the Social Welfare Law.

Q Did these discussions with the landlord and the discussions with the resident in the building take place prior to your visit to Mrs. Bradley?

A Yes.

Q How long before your visit did these discussions take place?

MR. NECO: Off the record.

(Discussion off the record)

MR. NECO: Can we indicate for the record that Mr. Hecht visited that building on three separate and distinct occasions.

Q Can you give us the dates of those visits?

A I don't recall them exactly.

Q Were they in April?

A Yes; the latter part of April.

Q Were they after the 15th of the month?

MR. NECO: All three visits?

MR. GILMAN: Yes.

A I feel certain they were.

Q And before the 30th of the month?

A Yes.

Q You had three visits within approximately a three-week period?

A Within a one-week period.

Q In other words, you visited Mrs. Bradley's residence three times within a one-week period.

A Right.

Q The first time you visited her did you have this conversation with the landlord and the neighbor?

A No.

Q The second time?

A No.

Q The third time?

A Yes.

Q Was it this third time that you also visited Mrs. Bradley?

A Yes.

Q Do you know the date of that visit?

A I believe it was April 27.

MR. NECO: In any event, I think the date is in the complaint.

Q Did you contact Mrs. Bradley before you visited her?

A No.

Q Is it custom and practice not to give prior warning to a recipient that you are going to make a visit?

MR. NECO: I will object to that. There is a conclusion with regard to the word "warning."

MR. GILMAN: There is a regulation that says that Mr. Hecht has to make the visit. I want to know if it is also custom and practice not to give her a warning before he makes the visit.

MR. NECO: I object to the word "warning." Notice.

Q Is there a custom and practice not to give notice before making a visit?

A Me, personally?

Q You are a caseworker in a special unit. Is it custom and practice not to give a prior notice before you make a visit?

A Yes.

Q Is there also a regulation which says that you should not give prior notice before you make a visit?

A No.

Q Have you ever been instructed not to give prior notice before you make a visit?

A Have I ever been instructed not to give?

Q Prior to the Bradley visit.

A Have I ever been instructed not to give notice in this particular case?

Q No. Have you ever been instructed not to give notice prior to making a visit?

A No.

Q Have you ever been instructed to give notice prior to making a visit?

A No.

Q Has the issue of giving notice ever been discussed with you by any employee of the New York City Department of Social Services?

MR. NECO: I am going to object to that question. It is a class-action problem again.

If you want to talk about it with regard to Bradley, that is one thing. He stated that he had never been advised by his superior to give or not to give notice. I think that would suffice.

As to whether he had academic discussions with others, that would be far afield.

Q In other cases that you have investigated have you ever given prior notice before you made a visit?

MR. NECO: I will object to that. It is a class-action problem again.

Q In other cases that you have investigated --

MR. NAGLER: Excuse me. In response to what you are saying here about class action, we feel it is directly relevant in this individual case as to the defendants Ginsberg and Wyman in terms of the custom and practice or any kind of instruction which Mr. Hecht had received.

MR. NECO: He has already stated that he has never been given instructions not to give notice and he has never been given instructions to give notice by his superiors.

That would apparently answer your issue there.

MR. NAGLER: That is why the question was asked with regard to discussion of the subject.

MR. NECO: He has indicated that his superiors have never instructed him one way or the other.

Q Have you ever given prior notification before making a visit?

A Yes.

Q Was there a particular reason why you did not give prior notification in Mrs.Bradley's case?

A Yes.

Q What were those reasons?

A If there is a charge of fraud, an allegation of fraud, our practice is to visit the client to find the client in her most natural situation.

Q There was a charge of fraud in Mrs. Bradley's case; is that correct?

MR. NECO: Objection: Section 136.

Q I will infer from your answer that there was a charge of fraud.

MR. NECO: You can infer anything, I suppose. But I am instructing him not to answer because we are dealing with Section 136.

Q What is the basis for that statement that you just made in response to my question, Mr. Hecht?

MR. NECO: Be a little more specific.

Q Is there a regulation which states that you should find the client in her most natural state when there is a question of fraud? Is there a statute, an informational, a bulletin, is there an executive order?

In other words, what is the basis for that statement, Mr. Hecht?

MR. NECO: If you know.

A As I have mentioned to you previously, we in the special unit are not required to notify a client that we are about to visit.

Q I didn't ask you that question.

A I believe that answers your question.

(The reporter read requested portion of the record.)

A (Continuing) Where there is any basis of concern of eligibility, it is not required to notify the client.

Q What is the basis for that statement, Mr. Hecht?

A The basis is the caseworker's judgment that there may be some irregularity.

MR. NECO: Would you say that Commissioner Ginsberg issued a directive?

THE WITNESS: Yes.

MR. GILMAN: Mr. Neco, I make an objection to that.

MR. NECO: You asked a question as to whether there was a directive. I am trying to cut away some of the surplussage.

Do you object to me giving you that information?

MR. GILMAN: No.

MR. NECO: Do you consider this to be responsive?

MR. GILMAN: All right. Go ahead.

MR. NECO: As I indicated, I understood from Mr. Hecht that there was a directive issued by Mr. Ginsberg. He had so stated a while back. And that directive contains the provision that he just spoke about.

THE WITNESS: I told you that 15 minutes ago.

Q That is your answer to the question, that there is a directive from the Commissioner.

If I understand both your discussions and your response to the question, Mr. Hecht, there is a directive from Commissioner Ginsberg which states that when you are investigating eligibility or fraud, that, in order to make a determination or a verification, it is best to find the client in the most natural state, and therefore prior notification is not required.

Is my thinking correct?

MR. NECO: That is not my understanding of the directive.

A The directive is as follows, to the best of my knowledge: It is guidelines for conduct in reviewing or investigating a case. The guidelines prescribe that clients shall be notified of any intended visit to their home, except in such case as there is doubt of eligibility.

Q Mr. Hecht, in this case there was doubt of eligilibty, Mrs. Bradley's case?

A There is alleged doubt.

Q These doubts were raised by the letter of complaint that you read; is that correct?

A The doubts -- that is not correct. The doubts are not raised in my mind. The client's eligibility to continue receiving assistance has been jeopardized by the letter.

I wish to make it very clear that our unit serves both functions --

MR. NECO: I will move to strike that conclusion about "jeopardize."

MR. GILMAN: It is perfectly all right with me to leave it in.

MR. NECO: Off the record.

(Discussion off the record)

Q You went to visit Mrs. Bradley for the third time on April 27; is that correct?

A I believe that is the date.

Q You went to visit her twice before.

A That's right.

Q Did you find her home twice before?

A No.

Q Did you leave a note that you had come to visit her?

A I couldn't get into the building.

Q Did you telephone Mrs. Bradley and inform her that you had tried to visit her twice before?

A No.

Q Did you write her a letter to the effect that you had tried to visit her twice before?

A No.

Q Did you go out and visit her for a third time on April 27, 1967?

A I believe that is the date.

Q Did you gain admittance this time into the building, Mr. Hecht?

A I did.

Q Who let you into the building?

A A man who identified himself as the landlord.

Q In other words, he opened the front door for you.

A He did.

Q The front door is locked from the inside; is that correct?

A It does not open to your pressure.

Q Was he standing by the door when you came?

A No.

Q Did you buzz the super's bell?

A No.

Q How did he let you into the building, sir?

A He opened it with a key.

Q Was he standing there and saw you waiting to come in and he walked by and opened the door for you?

A He was coming in from the street and I was preparing to leave. I asked him if Mrs. Bradley still lived in the building, and he pointed to her looking out her window.

Q Were you standing inside the lobby when you had this conversation with the landlord?

A Just outside the vestibule, prior to the lobby. The lobby is inside the locked door.

Q In other words, you were standing outside, in the courtyard?

A The street.

Q You were standing out on the sidewalk?

A Right.

Q You saw the landlord walk by and you asked him to open the door for you; is that right?

A At this point I did not know he was the landlord.

Q Tell me what happened.

A I was about to leave the building as he pulled up in a car. He got out of the car and came towards the building.

I asked him if he knew a Mrs. Bradley.

He said he did.

I said, "Does she still live here?"

He pointed to her, telling me, "There she is."

I looked up the front of the building, and a woman was looking out the window.

Q What time was this?

A Approximately ten after 9:00 in the morning.

I called to the woman, "Are you Mrs. Bradley?"

She answered that she was.

I said, "I would like to come up and speak to you."

She didn't answer. She retreated from the window.

The man and I then went into a vestibule which leads to the door. He opened the door with a key.

Q Then what did you do?

A Then I asked the man who he was.

He said he was the landlord.

Q Did he give you his name?

A No.

Q Could you describe him, if you saw him?

A Approximately 55 years of age --

MR. NECO: I will object to this.

Please answer the question.

A (Continuing) I am not sure.

MR. NECO: The question was could you describe him. If you can, answer "yes."

A (Continuing) Yes.

Q After the landlord opened the door what did you do?

A I asked him who he was.

Q He told you he was the landlord?

A Yes.

Q Then what?

A I asked him the family composition of the Bradley family.

Q What did he say to you?

MR. NECO: I am going to object to that.

I withdraw my objection.

A He said there was Mrs. Bradley.

Q Is this an elevator building?

A Not to my knowledge.

Q On which floor did Mrs. Bradley live?

A I don't recall for sure. I believe it was the fourth floor.

Q Did you walk up to the fourth floor?

A I did walk up.

Q Did you knock on Mrs. Bradley's door?

A I did.

Q Or did you ring the bell?

A I believe I knocked.

Q What was the weather outside?

A Pouring rain.

Q Did she have a mat outside the door?

A I don't recall.

Q Did you have an umbrella with you?

A No.

Q Was there a response to your knock?

A Yes.

Q Can you tell us what that response was?

A The person on the other side of the door asked, "Who is it?"

I identified myself vocally.

Q How did you identify yourself?

A I told her my name was Mr. Hecht, from the Department of Welfare, and I wanted to speak with her.

Q What did she say to you?

A "Write me a letter."

Q What did you say to that?

A I said, "Sometimes it is not feasible to write for an appointment."

Q What did she say to that?

A She didn't answer.

Q Then what happened?

A I told her I would slip my identification under the door so that she would know who I was, and I did.

Q You carry identification?

A I do.

Q Do you carry a badge?

A No.

Q Are you deputized?

A No.

Q Do you have a card?

A A card.

Q Do you have a copy of that card with you?

A Yes.

Q May I see it?

MR. NECO: Let the record show that I am handing to Mr. Gilman a green card enclosed in cellophane, bearing a photo picture of Mr. Paul Hecht, with a copy of his signature on the front; and on the back of the card there is the following statement: "The City of New York, Department of Welfare. This is to certify that Paul Hecht, whose signature and photograph appear on the reverse side, is an employee of the Department of Welfare," and there is a stamped signature which reads "Office of the Director," and the legend "Authenticated -- Bureau of Personnel Administration." On the front, below Mr. Hecht's signature, there is the statement "Use of this card other than by the designated person or other improper use is a penal offense."

I hand that card to Mr. Gilman.

Q How long have you carried this card with you, Mr. Hecht?

A Ever since I have been in the Department.

Q This very same card, the one I am holding in my hand?

A At one point I lost my original, so that is a duplicate.

Q Is the card I have in my hand the card you slipped under the door?

A Yes.

Q You slipped it under the door?

A Yes.

Q Did you slip anything else under the door?

A No.

Q Is that the only identification you had?

A Yes.

Q Did you find it difficult to slip it under the door?

A No.

Q It just went right under?

A I didn't get down on my hands and knees.

Q There was a gap there and you slipped it under, between the door and the floor; is that right?

A Yes.

Q What happened after you slipped your identification under the door, Mr. Hecht?

A Mrs. Bradley still would not admit me.

Q How do you know that?

A She said so.

Q What did she say to you?

A She said I cannot see her without a written appointment.

Q What did you say to her?

A I explained to her that I was from the Commissioner's office.

Q What did you say to her?

A That's what I said to her.

Q You said to her, "I am from the Commissioner's office"?

A "I am from the Commissioner's office. We have a problem we wish to discuss with you; and if we cannot come in to see you, then you will have to come to my office to see me, if you will wish to continue to receive assistance."

Q Did you tell her the name of the Commissioner?

A No.

Q You just said you were from the Commissioner's office.

A That's right.

(The reporter read requested portion of the record.)

THE WITNESS: I wish to make it clear that what I am recalling now is from an interview held ten months ago, and I don't know that every word is verbatim, exactly as it happened.

Q Do you have a written report of what happened ten months ago?

A I don't.

Q Did you make any written report ten months ago as to what happened?

A I did.

Q Do you have a copy of that report?

A Not with me.

Q Do you have it back in your office?

A I believe so.

Q Did you refer to that report before coming down here this afternoon?

A I did.

Q Do you remember what that report says?

A In general.

Q Is there any particular reason why you didn't bring that report with you today?

MR. NECO: The reason is the Social Welfare Law, Section 136.

Q What did Mrs. Bradley say to you after you said that to Mrs. Bradley?

A She opened the door.

Q She said nothing further to you?

A She did not.

Q You said nothing further to her?

A I did not.

Q She opened the door?

A She did.

Q Then what happened?

A She said to me, "Are you here to arrest me?"

Q What did you say to her?

A I asked her, "Why would I be here to arrest you?"

Q What did she say to you?

A She shrugged her shoulders.

Q At that time did you pick up your identification that was on the floor?

A No.

Q Was it still under the door?

A No.

Q Where was it?

A In my pocket.

Q How did you get it back from the other side of the door?

A It was slid under the door.

Q When was that done? Before you made that statement?

A Which statement?

Q The one where you informed her that you were from the Commissioner's office.

A It was slid back before -- I am not sure what the timing is there.

Q Anyway, before the door was opened you had your identification.

A I did.

Q When Mrs. Bradley slid back your identification did she say anything?

A No.

Q She just slid it out; is that right?

A Yes.

Q What did you say after she shrugged?

A I asked her if I might see the apartment.

Q What did she say to you?

A "Yes."

Q Did you walk in?

A She led me in.

Q You walked, didn't you?

A As opposed to crawled?

Q Or fly.

A I followed her in.

Q She walked in first?

A She did.

Q Were you wearing rubbers?

A No.

Q You had no umbrella?

A No.

Q Where did she lead you?

A First into the kitchen.

Q What did you do in the kitchen?

A I asked her if her appliances all worked satisfactorily.

Q Is there any reason why you asked her if her appliances worked satisfactorily?

A Yes.

Q What was the reason?

A In all homes that we visit we make sure that the services provided by the landlord are adequate.

Q Did you ask her any other questions,while you were in the kitchen,about the appliances?

A Not about the appliances. I don't recall if I asked her another question.

Q But you remember asking her about the appliances.

A Yes.

Q Did she answer you?

A Yes.

Q What did she say?

A She said they all worked well.

Q Then what did you do?

A Then she led me into the living room and hallway, and then she led me into the bedroom.

Q Did you sit down in the living room before you went into the bedroom?

A No.

Q Did you take off your coat?

A Not yet.

Q Did you have a hat on?

A I don't recall.

Q Were you soaking wet?

A No.

Q Were you dry?

A Yes.

Q When you made your report did you detail your visit the way you are now discussing it with me?

A No.

Q Did you put in your report that the appliances were all working fine?

A No.

MR. NECO: I will object.

MR. GILMAN: He answered the question.

MR. NECO: I want to object based upon 136.

MR. NAGLER: Mr. Hecht, was the question with regard to Mrs. Bradley's appliances relevant to the purpose of your visit?

THE WITNESS: No.

Q Did you ask any other questions that were not relevant to your visit?

MR. NECO: I will object.

MR. GILMAN: I don't know on what grounds.

MR. NECO: You are asking for a conclusion.

Ask him whether he asked specific questions. You can't expect him to give you a conclusion as to what was or was not relevant. As to the specific question that he asked, he can determine.

MR. NAGLER: If it wasn't relevant to your visit, why did you ask the question?

THE WITNESS: We ask this of all clients who we visit, because our purpose in visiting a case is twofold.

MR. NAGLER: Why didn't you note it in the report?

THE WITNESS: We only note it in the report if the appliances do not work.

Q How long did you spend in the living room, Mr. Hecht, before you went to the bedroom?

A Several seconds.

Q Did you look around?

A Yes.

Q What did you notice?

A I noticed a hallway, with a crib in it. I noticed a nicely-kept apartment. I noticed a bottle of Harvey's Bristol Cream and two glasses.

That's about all of interest.

Q Did you say anything about the crib?

A Not at that time.

Q Or about the two glasses?

A Not at all.

Q Or the bottle of Harvey's Bristol Cream?

A Not at all.

Q Did you ask Mrs. Bradley for a drink?

MR. NECO: I am going to object to that. I will let him answer.

A I think it is an insolent question.

Q There is nothing insolent about it. It was a rainy day.

A No, I did not ask her for a drink.

Q Then you went to the bedroom.

A I was led into the bedroom.

Q Did you ask to be led into the bedroom?

A I asked to see the apartment.

Q Was there any reason why you asked to see the apartment?

A Yes.

Q What was that reason?

A We like to know that our clients are getting the full benefit of landlord services.

Q Is that the reason you visited her?

A No.

Q Why did you have to see the apartment?

A Because, as long as we are visiting a client, we do a complete survey of the services she is receiving.

Q Is this your job or is that the job of the caseworker at the local service center?

MR. NECO: He answered that question.

Q So you went into the bedroom.

A I was led into the bedroom.

Q What did you see in the bedroom?

A A bed.

Q Anything else?

A Typical bedroom furniture.

Q Nothing out of the ordinary?

A No.

Q Then where did you go?

A Into the bathroom.

Q Did you have a discussion with Mrs. Bradley while you were in the bedroom?

A About what?

Q I don't know. I am asking you.

While you were in the bedroom did you discuss with her the complaint that was made to your unit?

A No.

Q Did you discuss with her her eligibility?

A No.

Q Did you explain to her what problem you were there to investigate?

A No.

Q Can I assume that you did not also do that while you were in the living room?

A You assume correctly.

MR. NECO: You are talking about the first time?

MR. GILMAN: Right; when he first came in.

Q Did you ask Mrs. Bradley to lead you into the bathroom?

A No.

Q How did you get into the bathroom?

A She led me in.

Q What do you mean by "led"?

A She preceded me.

Q Did she say, "Step this way"?

A No. As she moved, I followed her.

Q She seemed to know what you wanted?

MR. NECO: I am going to object to that.

Q When you went to the bathroom what did you see?

A A bathroom.

Q Did you see anything extraordinary?

A No.

Q Did you make any comments to Mrs. Bradley while you were in the bathroom?

MR. NECO: As to what?

Q Did she say anything to you and did you say anything to her with reference to the complaint?

A No.

Q Or as to any problem you had come to discuss with her?

A No.

Q Did you have any chitchat of a personal nature?

MR. NECO: What do you mean?

Q Did you discuss the weather with her, the color of the tiles in the bathroom?

A I didn't discuss the weather nor the bathroom tiles.

Q Did you make any reference to any of the items you saw in the bathroom?

A I'm sorry. You will have to rephrase that question. I made reference to what she said.

Q What did she say to you while you were in the bathroom?

A She made some statements, that I will find shaving equipment in her medicine chest, and opened her medicine chest.

Q She asked you to open her medicine chest?

A She didn't ask me to open anything.

MR. NECO: Who opened her medicine chest?

THE WITNESS: She opened her medicine chest.

Q Did this statement about the medicine chest come out of the blue? You walked in and she said, "You will find shaving equipment in the medicine chest"?

A No.

Q Was there a conversation that preceded that?

A Yes.

Q Will you give us the essence of that conversation.

A Mrs. Bradley seemed --

Q Let me rephrase it.

What did you say to her and what did she say to you?

A I said nothing to her.

She, in the bedroom, said, "If you think I have a man here, you are mistaken."

Q What did you say to her?

A I said, "I am not interested in whether you have a man here." I said, "I am not concerned," or something to that effect.

Mrs. Bradley then said she has no interest in men since her experience with her husband.

I commented that she had an inordinate amount of toilet-water bottles for someone not interested in men.

We went into the bathroom and she continued on this vein --

Q What did she say to you and what did you say to her?

A I don't remember exactly. There were remarks about her not being involved with men.

You have to understand, Mr. Gilman, that,at the time, I was not aware that I would have to recollect this ten months later, or I would have taken careful note.

Q Did you take careful note in making the report?

A Yes.

Q Did you read that report before you came down here?

A Yes.

Q The things you tell me are in that report?

A That's right; but I don't believe there is any verbatim conversation in the report.

Q Did she say anything else to you, while you were in the bedroom, about men?

A She continued harping on the idea that she was not involved with a man.

Q Did you say anything to her about her involvement with men?

A No; I had not broached the subject, and, as a matter of fact, I tried to dissuade her from it as it wa not part of the complaint, for one.

For another, we are not concerned with our clients' romantic life, if they have any or do not have any. It was an area of interest that could not appeal to me at all; it had no relationship to the case. There is no regulation that prevents a client from being romantically involved. And, in some instances we encourage it.

Q Did you encourage it in this instance?

MR. NECO: I move to strike "encourage."

MR. NAGLER: I would suggest that the entire answer be stricken as unresponsive.

Q Did you look in Mrs. Bradley's medicine cabinet?

A When she opened it.

Q What did you see?

A I saw all the razors that she told me I would see.

Q How many did you see?

A I don't recall if it was one, two or three.

Q Were there ten?

A I would have remembered. There were not ten.

Q One or two?

A One or two.

Q Did you make any remarks to Mrs. Bradley concerning these razors?

A No.

Q Did she make any to you?

A None.

Q Did you see anything else in the medicine cabinet?

A I saw lots of things.

Q Did you make any reference to the things you saw in the medicine cabinet?

A Yes.

Q What did you make reference to?

A In the nature of humoring Mrs. Bradley, since she seemed so fearful that we would take some punitive action if she were involved with a man, I mentioned to her --

MR. NECO: I will move to strike that she seemed fearful. That is a conclusion.

MR. NAGLER: You are quite right. It should be stricken.

A (Continuing) I saw various things in her medicine chest.

Q Was there any discussion entered into between you and Mrs. Bradley about any things you saw in the medicine chest?

A Yes.

Q What things, and what discussion took place?

A If I may, I would like to include the background and context to the remark or discussion that was made there.

Mrs. Bradley kept talking about her not being involved with a man, in the bedroom.

I mentioned to her that she had a lot of toilet-water bottles, which she laughed at.

When we first came into the bathroom she pointed out a his-and-her towel. She said, "Even though I have a his-and-her towel, there is no 'his.'"

At which point I laughed.

When she opened the medicine chest, I pointed out to her that I thought that I was observing what appeared to be birth-control paraphernalia, and she said it was not.

Q What is birth-control paraphernalia?

A Suppositories.

Q Is that what you saw?

A I don't know whether they were. I asked her, not in the form of a question, it was in the same vein, in the way we were almost -- I can't find the right word to describe the mood. It was not a hostile mood. She kept trying to show me all the evidence that she was not involved with men, and I kept trying to tell her we couldn't care less.

MR. NECO: When you say "not hostile," would you say it was a friendly mood?

THE WITNESS: It was a friendly mood.

Q Would you say it was a fearful mood?

A No. Mrs. Bradley laughed frequently.

Q You did also?

A Yes.

Q What did you ask her? You said you saw suppositories.

A I didn't say that. I asked her if that was birth-control paraphernalia.

Q Was there a reason you asked her this?

A To get her off the conversation of being involved with men.

Q What did she say to you?

A She said it was not. And I didn't bother continuing the conversation.

Q By asking her about what those supposedly looked to you as suppositories, did you think that that would help you get off that conversation?

A Not that question. The question was more rhetorical, in the sense that I rhetorically pointed out to her the toilet-water bottles.

Q Why did you point out the toilet-water bottles to her?

A Just to get her off the conversation. In my opinion, this would cease and desist. I wasn't interested in discussing this with her, and I made it quite clear to her.

Q But you were the one who brought up the toilet water?

A Yes.

Q You were the one that mentioned the birth-control paraphernalia; is that correct?

A That's right.

Q When you were in the bedroom did you mention anything about the bed?

A No.

Q Did you observe anything about the bed?

A Yes.

Q What did you observe?

A I can give you my impressions.

MR. NECO: I am going to object to that.

Q Was the bed made?

A No.

Q Was it slept in?

A I presume so.

Q By more than one person?

MR. NECO: I will object to that. You are asking for a conclusion on his part.

Q Did you ask Mrs. Bradley who slept in the bed?

A No.

Q Did you notice anything else in the bedroom while you were in the bedroom?

A No.

Q That you spoke to Mrs. Bradley about.

A We weren't in the bedroom more than 20 seconds.

Q Did you touch anything on the dressers?

A No.

Q On the night table?

A I touched nothing.

Q At all?

A At all.

Q In the bedroom?

A In any room.

Q You touched nothing in the bathroom either?

A Nothing.

Q You just discussed things that you saw?

A That's right.

Q Did you discuss anything else, any other items, while you were in the bathroom?

A No.

Q Did you have any other discussions with Mrs. Bradley in the bathroom?

A No.

Q When you finished discussing the birth-control paraphernalia, then what happened?

A I walked out of the bathroom, into the living room.

Q You walked out first?

A Yes.

Q Mrs. Bradley followed you?

A She did.

Q You went back into the living room?

A That's right.

Q What happened in the living room?

A I then discussed with her the whereabouts of her child.

Q Tell me what you said to her.

A I asked her where her child was.

She said her child had gone to the clinic that morning with a friend.

MR. GILMAN: Off the record.

(Discussion off the record)

BY MR. NAGLER:

Q At what point did you say that Mrs. Bradley told you that the appliances worked?

A She told me that in response to my question.

Q At what point from the time you came into the apartment to the point you have described up to now did that occur?

A She told me that in the kitchen and in the bathroom.

Q The kitchen was the first room you went into?

A Yes.

MR. NECO: He so testified.

Q Was there any reason why you wanted to see the bedroom?

A No. I just told her.

Q Were there any appliances in the bedroom that you were interested in?

A I didn't ask about any appliances in the bedroom; I didn't ask any questions about anything in the bedroom.

Q Did you ever tell her why you wanted to see her apartment?

A No.

Q Did you ever, in any way, indicate that you were interested in the operation of the appliances?

A I certainly did.

Q And the reason you were interested?

A I didn't verbalize the reason. I would presume she was able to guess.

MR. NECO: I move to strike that presumption.

Q You never toldher the reason?

A No.

Q Had you been told that certain appliances did not work, would it have been your custom and practice to do anything about it?

A Yes.

Q What would that have been?

A We would have notified the client of what redress she can get to have the appliances repaired.

Q In what way does your custom and practice in this respect differ from the custom and practice of the local welfare center, if you know?

MR. NECO: I think you will have to verbalize what the custom at the local center is.

A Our custom and practice has come about through experience. Frequently we have found, in going to a home, that the client was under-clothed, under-furnished, and sometimes they did not know what to ask for and did not even discuss these things with their caseworker.

Q This subject was in no way relevant to the purpose?

A In no way relevant to the purpose.

MR. NAGLER: I have nothing else.

MR. GILMAN: This is to be continued.

____

Subscribed and sworn to before me

this____day of_______________1968

____

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, MICHAEL F. D'AUGE, a shorthand reporter and Notary Public of the State of New York, do hereby certify that on the date and at the time and place hereinbefore mentioned, I was attended by the witness, Paul Hecht, and counsel for the parties as indicated; that the witness was by me first duly sworn before the commencement of his testimony; that I stenographically recorded the testimony of the witness, and that the within is a true and accurate transcript of my shorthand notes.

I further certify that I am not related to or employed by any of the parties, or their counsel, nor am I in any way interested, directly or indirectly, in the outcome of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13th day of March 1968.

Michael F. D'Auge

MICHAEL F. D'AUGE
Notary Public, State of New York
No. 24-0265725
Qualified in Kings County
Commission Expires March 30, 1969

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of :

SYNESTER BRADLEY :

from a determination by the New York City Department
of Social Services (hereinafter called the agency) :

:

DECISION
AFTER
FAIR
HEARING

A fair hearing was held at 270 Broadway, New York City on November 2, 1967, before Victor Zuckerman, Referee, at which the appellant, the appellant's representative, and representatives of the agency appeared. The appeal is from a determination by the agency relating to the discontinuance of a grant of Aid to Dependent Children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

1) On June 2,1967, the appellant appealed, contending that her grant of Aid to Dependent Children had been wrongfully closed from May 9, 1967, to June 15, 1967; and the agency had failed to meet her actual costs of gas and electricity and had failed to provide needed items of furniture.

2) In April, 1967, the agency received information that the appellant's child, Lawrence, an infant of 15 months of age, was living in West Virginia. The appellant about the same time notified the agency that she had commenced working on April 27, 1967, at a salary of $40 weekly. The agency suspended payment of the appellant's grant and later closed the case, effective May 9, 1967, on the grounds that the appellant's child was out of the home.

3) On May 12,1967, the appellant's representative contacted the agency and objected to the discontinuance of the grant, stating that the child was absent from the home on a temporary basis only and requested that the appellant's case be reopened immediately.

4) The appellant was employed at a salary of $40.00 weekly when she came to the agency's office with her son on May 23, 1967 and reapplied for assistance. She was subsequently terminated in her employment on June 9, 1967 but was paid through June 15, 1967. The agency then reopened the appellant's case effective June 16, 1967 in the amount of $85.15 semi-monthly. A review of the appellant's budget during the period her case was closed revealed that she had a budget deficit over and above her wages of $16.70 semi-monthly.

5) With reference to the appellant's request for an increase in her regular allowance for gas and electricity, the agency agreed to consider and determine her need and make the proper adjustment on the basis of utility bills to be

submitted by the appellant for review and evaluation.

6) It was stipulated between the parties, at the hearing, that the appellant had requested a dresser, and that a special grant for a dresser would be authorized by the agency, pursuant to its approved policies and standares of assistance.

After consideration of the entire record, it is determined that the agency acted improperly in closing the appellant's case effective May 9,1967 on the grounds that her only child was not in the home. The record shows that the child was only visiting relatives in West Virginia; and during its absence, the appellant continued to forward money for its support. Section 369.4 (c) of the Regulations of the New York State Department of Social Services provides in part:

> "Temporary absence from the home or from the district of a child * * * shall not affect a previous determination that the child is living with an eligible relative when it is determined that the parent or relative retains full responsibility for control of the child and the absence cannot be interpreted as a change in the child's home. Such absence may include visits to friends or relatives * * *."

It is determined that, as a result of the improper closing of the grant of Aid to Dependent Children, the appellant incurred an indebtedness of $10.00, which consisted of a loan to purchase food.

It is further determined that the agency failed to promptly consider and determine the appellant's entitlement to an increased allowance in her regular recurring grant for gas and electricity. The fact that it agreed, at the hearing, to take action in this matter does not justify its failure to so act, within 30 days of the request.

The issue, with respect to whether or not the appellant requested a dresser was resolved at the hearing through the agency's stipulation that there was need for same and its agreement to issue a special grant in a suitable amount.

DECISION The agency is directed to issue a special grant in the amount of $10.00 to enable the appellant to pay the indebtedness incurred as a result of the agency's error in closing her case.

The agency is further directed to issue, if it has not already done so, a special grant in a suitable amount according to its approved standards for a dresser; and

It is further directed to consider and determine the appellant's entitlement to an increased allowance for gas and electricity; and

The agency is directed to report to the Area 6 Office of the New York State Department of Social Services its action, pursuant to this decision and Section 356.4 (e) of the Regulations of the New York State Department of Social Services.

Dated: Albany, New York
APR 4 1968

George K. Wyman

COMMISSIONER

MSS SEDFRE
546

BRADLEY, SYNESTER VS. GINSBERG, MITCHELL, I. etal. NEW YORK 1967-1968

Box 34
Folder 27

State Historical Society of Wisconsin

Please Retain Original Order

THE LEGAL AID SOCIETY
290 LENOX AVENUE
NEW YORK, N. Y. 10027

Shyleur Barrack

HQ 5244

May 3, 1967

Commissioner Mitchell I. Ginsberg
New York City Department of Welfare
250 Church Street
New York, New York

RE: Mrs. Synester Bradley
1492 Longfellow Avenue
Bronx, New York 10460

Dear Commissioner Ginsberg:

We are writing you concerning our client Mrs. Bradley. Our client was visited by Mr. Paul Hecht last week, who represented himself to be a special investigator "sent by Commissioner Ginsberg's office". Our client, who had no previous contact with your office, was confused and bewildered and after Mr. Hecht showed her his identification she allowed him to come into her home. Mr. Hecht told her he was there to investigate her case and during the visit he questioned our client as to her sexual activities, and her position as chairman of a neighborhood welfare recipients group. He also wanted to know why she was not seeking employment.

This investigator told our client that he had information to the effect that there was a man living in her house and therefore he conducted a search of our clients apartment to see whether this was true. This search included the opening of our clients medicine chest and comments to the effect that articles found therein and in other parts of the bathroom were contraceptive devices. The investigator also questioned our client concerning her activities as chairman of her welfare group and during the visit asked permission to use our clients telephone to make two calls purportedly to his office.

It has been our understanding that such searches of welfare recipients homes are not the policy of the New York City Department of Welfare. I am sure that you have never advocated such a policy

COPY

because you are well aware of the constitutional issues raised by such policies. It is clear that this search was conducted to gather evidence for a criminal prosecution of our client and an inference can be drawn that the methods used were also designed to discourage her activities as chairman of her welfare group.

We are sure that this type of action was not with your knowledge or approval and that you share our sense of outrage and indignation. Due to the frightening repercussions from this type of activity, we bring this situation to your attention, and we pray that you will take the necessary steps to insure that such a thing will never happen again to our client or to anyother secipment of public assistance.

We thank you for your cooperation and consideration in this matter and remain,

Respectfully yours,
THE LEGAL AID SOCIETY

David Gilman

DG:jd

COPY

Dear Commissioner Ginsberg:

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It has been our understanding that such searches of welfare recipients homes are not the policy of the New York City Department of Welfare. I am sure that you have never advocated such a policy

St. Augustine Presbyterian Church
PROSPECT AVENUE AT 165TH STREET
BRONX, N. Y. 10459
PHONE DAYTON 3-7253

EDLER G. HAWKINS
MINISTER

May 4, 1967

Mr. David Gillman
Legal Aid Society
290 Lenox Avenue,
New York, N.Y. 10027

Dear Mr. Gillman:

I am writing in the interest of a Mrs. Sandy Bradley who has, I understand, a problem in relation to her welfare status related to her timing in coming on our little job situation we offered to her.

Her interpretation would be correct in indicating that she started working at our Extension on Freeman Street, just this past week, at the part-time salary stipend of $40. a week, but that we did have Mrs. Bradley in for a two-week training period at our main center, with our Leisure-Time group here, preparatory to her starting at the Center. We did pay her for this training period, even though her work did not start formally until this past week.

Hoping this will clarify our situation and be of some help to her.

Sincerely,

Edler G. Hawkins
Edler G. Hawkins

EGH/t

RECEIVED
MAY 5 1967
THE LEGAL AID SOCIETY

May 18, 1967

I Synester Bradley 2446654, on behalf of myself and child. authorize Carl Rachlin and Stephen M. Nagler. to represent me before the dept. of social Welfare of the state of N.Y.- and in any Judicial proceedings which may be necessary.

Synester Bradley
1492 Longfellow ave
Bronx New York 10460

THE LEGAL AID SOCIETY
290 LENOX AVENUE
NEW YORK, N. Y. 10027

HQ 5244

May 25, 1967

Commissioner Mitchell I. Ginsberg
New York City Department of Welfare
250 Church Street
New York, New York

RE: Mrs. Synester Bradley
1492 Longfellow Avenue
Bronx, New York 10460

Dear Commissioner Ginsberg:

We were contacted by Mr. Felder concerning the above matter. On May 25, 1967, we had a conference with Mr. Felder in which we attempted to clarify the issues and come to an understanding in regards to our letter to you of May 3, 1967. I think the discussion was profitable insofar as we clarified the issues. It is our contention that the issue is not whether the Department of Welfare has a right to conduct an eligibility investigation, but what procedures the special investigator must follow in conducting himself. The issue of illegal search and the procedures that special investigators must follow goes far beyond the Bradley matter. In order to protect all welfare recipients from abusive procedures, specific regulations must be devised.

We suggested to Mr. Felder that the Department issue specific regulations regarding the conduct of special investigators while participating in eligibility investigations. Specifically that a client should be given prior notice that a special investigator will be visiting her. Also that the investigator must receive the consent of the client before entering the home and that this consent should not be elicited through the threat of discontinuance of aid. That once the investigator has gained entrance the verification of eligibility should be based solely upon discussion had with the client and

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that no attempt should be made to search the home without the explicit prior consent of the client.

We suggest that these and other regulations be issued clearly designating guide lines that special investigators should follow when making their investigations. The above is only meant to be a suggestion and we offer our cooperation in this matter.

The Bradley case is still pending. We have had no written response and our client is pressing for an early determination. May we please have a reply at your earliest convenience.

Very truly yours,

THE LEGAL AID SOCIETY

David Gilman

DG:jd
CC: Mr. Samuel Felder
Director Division of Legal Service
250 Church Street
New York, New York

COPY

Commissioner Mitchell I. Ginsberg
New York City Department of Welfare
250 Church Street
New York, New York

RE: Mrs. Cynester Bradley
[illegible] Longfellow Avenue
[illegible], [illegible] York 10460

Dear Com[illegible]

We [illegible] Mr. Felder concerning the above matter. On May 25, 1967, we had a conference with Mr. Felder in which we attempted to clarify the issues and come to an understanding in regards to our letter to you of May 3, 1967. I think the discussion was profitable insofar as we clarified the issues. It is our contention that the issue is not whether the Department of Welfare has a right to conduct an eligibility investigation, but what procedures the special investigator must follow in conducting himself. The issue of illegal search and the procedures that special investigators must follow goes far beyond the Bradley matter. In order to protect all welfare recipients from abusive procedures, specific regulations must be devised.

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V.Z. 6/67

June 1, 1967

Hon. Joseph Louchheim, Deputy Commissioner
New York State Department of Social Welfare
270 Broadway
New York, New York 10007

Re: Synester Bradley-ADC 2446654
1492 Longfellow Avenue
Bronx, New York, 10460

Dear Commissioner Louchheim:

On behalf of the above named client we demand a fair hearing. The issues which we propose to raise at the hearing are as follows:

1. Wrongful closing of the client's case.
2. Conduct of an unlawful search by the local agency for the purpose of securing evidence against the client, in violation of her rights under the 4th amendment to the Constitution of the United States. We regard this as a separate issue to be raised at the hearing.
3. Failure of the agency to meet the actual needs of the client in so far as the costs of gas and electricity are concerned.
4. Failure of the local agency to provide certain furniture needed by the client.

We contend that the closing or suspension of a public assistance case without prior fair hearing is a violation of the client's right to due process. Accordingly we demand that assistance be extended to the client pending a fair hearing, consisent with her needs. Unless we hear from you accordingly it will be necessary to seek a judicial remedy.

Very truly yours,
Carl Rachlin by

Stephen M. Nagler

CR/SMN:n
CC:Comm. Ginsberg

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

GEORGE K. WYMAN
COMMISSIONER
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
NEW YORK CITY OFFICE

PLEASE SEND NEW YORK CITY
CORRESPONDENCE TO:
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER
270 BROADWAY
NEW YORK, N. Y. 10007
TELEPHONE BARCLAY 7-1616

June 5, 1967

Mr. Carl Rachlin
Scholarship, Education and Defense
Fund for Racial Equality
150 Nassau Street
New York, New York 10038

Re: BRADLEY, Synester - ADC 2446654
1492 Longfellow Avenue
Bronx, New York

Dear Mr. Rachlin:

This is in reply to your letter of June 1, 1967 requesting a Fair Hearing on behalf of the above mentioned family, based on the discontinuance of ADC by the New York City Department of Welfare.

Our office will make the necessary review with the New York City Department of Welfare of the situation involved in this Fair Hearing request. If this matter is not adjusted in a manner that is satisfactory to Mrs. Bradley, a hearing will be scheduled within sixty (60) days and your office will be given five days notice of the time and place of such a hearing.

Sincerely yours,

Claudia Lang

Claudia Lang
Senior Welfare Representative
Family Services

489-3517

July 28, 1967

Scholarship, Education and
  Defense Fund For Racial
  Equality
150 Nassau Street
New York, New York

Re: BRADLEY, Mrs. Symester
1492 Longfellow Avenue
Bronx, New York
ADC 2446654

Att: Mr. Stephen M. Nagler

Dear Mr. Nagler:

We are replying to your letter of 6/1/67 in which you requested a Fair Hearing in behalf of Mrs. Bradley.

We have received a report from the Department of Social Services in which they advise us that Mrs. Bradley's case was reopened on 6/15/67 as her employment was terminated.

We are further advised that Mrs. Bradley has consistently refused to permit her caseworker to visit her to evaluate her need for household furnishing stating that it is "not worth a home visit". She had mentioned a need for a bureau or a chest of drawers although agency records indicate that a grant of $20 was issued for a chest of drawers.

We are advised that at the time of the current application Mrs. Bradley had no bill for utility arrears and the only outstanding bill was for the period 3/7 - 5/4/67 in the amount of $13.98 accumulated during a period she was in receipt of full assistance. In addition, the City Department of Social Services advised that Mrs. Bradley had concealed income from employment and therefore would have had funds available to meet this bill.

No request for payment of this bill was made by Mrs. Bradley when she reapplied on 7/11/67.

We have asked the Department of Social Services for further clarification of their basis for closing this case on 5/9/67 as it appeared from our

Scholarship, Education and
Defense Fund For Racial
Equality

July 20, 1967

Att: Mr. Stephen M. Nagler

review of the case record that she had a budget deficit. We will write to you again when we have clarified this further.

The issue you raise about an "unlawful search" of client's apartment is not a basis for a Fair Hearing. The New York City Department of Social Services does have a responsibility to make an investigation into a case where an ineligibility complaint has been made. Such investigation should be made with decorum and with due respect for the client's dignity and self-esteem.

We hope the above satisfactorily answers the issues you raised in your letter of 6/1/67. If we do not hear from you by 8/11/67, we will assume that you have accepted the agency's decisions and do not wish to continue with your request for a Fair Hearing.

Very truly yours,

Harry H. Brown
Welfare Representative

1. Child seat   before $86.90   after.

$16.70

Closed 5/9   6/16 - $85.15

Open 6/16 - $16.70   present

6/16 $85.15 $16.70

left work. 6/9/67 -

Child returned (they say) =

5/29 - visited by McMahan.

5/12 =

127(a) - Bulletin of Commissioner

4/27/67 - Hecht.

3/26/67 - left home

~~Bradler~~

$14.~~90~~.

+ 3.90

August 1, 1967

Mr. Harry H. Brown
Senior Welfare Representative
Department of Social Welfare
State of New York
270 Broadway
New York, New York

Re:BRADLEY,Synoster ADC 2446654
1492 Longfellow Avenue
Bronx, New York

Dear Mr. Brown:

Today is the 62nd day from the date of our request for a fair hearing in behalf of the above named client. As you know fair hearings must be scheduled within 60 days of a request.

Aside from the issues of "unlawful search"which we do not waive, your letter discusses several issues which you incorrectly consider as "disposed of".

First the matter of back payments for the period of wrongful termination- this issue is ripe for a hearing now .
Second, electricity bills - the allegations (perhaps better denominated character assasinations) of the local agency in no way foreclose the issue.

Therefore we demand that a fair hearing be scheduled at once. If this is not done, we will seek our judicial remedy for your violation of the Social Welfare Law, and your regulations thereunder.

Very truly yours,

Stephen M. Nagler

SMN:n

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

GEORGE K. WYMAN
COMMISSIONER
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
NEW YORK CITY OFFICE

PLEASE SEND NEW YORK CITY
CORRESPONDENCE TO:
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER
270 BROADWAY
NEW YORK, N. Y. 10007
TELEPHONE BARCLAY 7-1616

August 10, 1967

Mr. Stephen Nagler
Scholarship, Education and
Defense Fund for Racial Equality
150 Nassau Street
New York, New York

Re: BRADLEY, Mrs. Synester
1492 Longfellow Avenue
Bronx, N. Y.

Dear Mr. Nagler:

We wish to acknowledge receipt of your correspondence of August 1, 1967.

We are aware that the report from the Department of Social Services did not cover all of the issues raised by you and indicated in our letter to you of July 28, 1967 that we had asked that agency for further clarification and planned to write to you again. As soon as such information is received it will be forwarded to you.

As we are sure you are aware this case has been scheduled for a Fair Hearing on August 25, 1967.

Very truly yours,

Harry H. Brown

Harry H. Brown
Senior Welfare Representative

August 12, 1967

Hon. Mitchell I. Ginsberg
Commissioner, New York
City Department of Welfare
250 Church Street
New York, New York 10013

Re: Bradley, Synester
1492 Longfellow Ave.
Bronx, N. Y.

Dear Commissioner Ginsberg:

As you already know, I represent the above named client. Pursuant to the rules and regulations of the department of Social Welfare of the State of New York, I demand that we be furnished in advance of the hearing, access to any and all documents which your agency proposes to introduce at the scheduled hearing. So that we may determine what information in the case record may be helpful to us, we demand that we be given access to the case record.

Very truly yours,
Carl Rachlin

By: Stephen M. Nagler

CR/SMN:d
R.K.
CC: Office of Counsel
N.Y.S. Dept., of Social Welfare
112 State Street
Albany, New York

HUGH R. JONES
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

GEORGE K. WYMAN
COMMISSIONER
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
NEW YORK CITY OFFICE

PLEASE SEND NEW YORK CITY
CORRESPONDENCE TO:
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER
270 BROADWAY
NEW YORK, N. Y. 10007
TELEPHONE BARCLAY 7-1616

August 22, 1967

Mr. Stephen Nagler
Scholarship, Education and Defense
Fund for Racial Equality
150 Nassau Street
New York, New York

Re: BRADLEY, Mrs. Synester
1492 Longfellow Avenue
Bronx, New York
ADC 2446654

Dear Mr. Nagler:

Please refer to our correspondence of 8/10/67.

We have now received a follow up report from the New York City Department of Social Services in which they advise us that they have confirmed with Mrs. Bradley that at the time her case was closed her son, Lawrence, was not in the home and was living in West Virginia. On the basis of this she had a surplus of $11.52 with her employment earnings of $40 per week.

The agency discussed Mrs. Bradley's unpaid utility bill in the amount of $13.94 with her on 8/11/67 and it was pointed out to her that she should have been able to pay this bill since she had been in receipt of full assistance and in addition had the benefit of additional unbudgeted income from employment.

Mrs. Bradley indicated that she would attempt to pay this bill but should she be unable to do so the New York City Department of Social Services will consider issuing duplication assistance for the utilities.

We hope this explanation answers your request for a Fair Hearing satisfactorily. On receipt of this letter would you notify us whether or not you still wish to have the Fair Hearing scheduled for 8/25/67.

Very truly yours,

Harry H. Brown
Harry H. Brown
Senior Welfare Representative
Family Services

N.B. Agency advised subsequently, that on 8/21/67 a grant for duplication of utilities was issued in the amount of $13.84.

August 23, 1967

S. Jerald Ducker
Referee
Department of Social Welfare
State of New York
112 State Street
Albany, New York

Re: Fair hearing-Synester Bradly

Dear Mr. Ducker:

It will be impossible for the above named client to attend hearing scheduled for 4:30 P.M., Friday, August 25th. We therefore, respectfully request, that the hearing be adjourned for two weeks.

We also wish to note that we have not received the documents requested from New York City Department of Social Services. Thank you for your attention.

Very truly yours,

Stephen M. Nagel

SMN:da
cc: Mitchell I. Ginsberg
Harry Brown

September 29, 1967

Robert B. Keyes, Esq.
Supervisor of Referees
Department of Social Services
State of New York
270 Broadway
New York, New York 10007

Re:Synester Bradley-Fair Hearing

Dear Mr. Keyes:

The above entitled fair hearing was adjourned *sine die* at the end of August. Why has it not yet been rescheduled ?

Thank you for your attention.

Very truly yours,

Stephen M. Nagler

SMN:n

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

112 STATE STREET • ALBANY

HUGH R. JONES
Chairman
State Board of Social Welfare

GEORGE K. WYMAN
Commissioner

October 18, 1967

Synester Bradley
1942 Longfellow Avenue
Bronx, New York 10460

RE: Fair Hearing

In compliance with your request we are scheduling a fair hearing. The hearing will be held at the New York Area Office of this Department, 270 Broadway, New York, New York on November 2, 1967 at 10:00 a.m.

For your convenience, we suggest that you arrive shortly before the time that your hearing is scheduled and that you wait in this Department's reception room on the lobby floor until your case is called.

Please be advised that you may be accompanied to the hearing by any person whom you wish to have assist you in the presentation of your case.

If, for any reason, you are unable to attend the hearing or wish to withdraw your request for a hearing, please notify the Area #6 Office, 270 Broadway, New York, New York and the New York City Department of Social Services, 250 Church Street, New York, New York.

We are sending you the original of this letter by certified mail and a copy by ordinary mail, to make certain that you are notified of this hearing.

Very truly yours,

ROBERT B. KEYES
Supervisor of Referees

Certified Mail
cc:

Stephen M. Nagler
S.E.D.F.
150 Nassau Street
New York, New York 10038

Board of Social W

November 21, 1967

Michael H. Rauch
Assistant Attorney General
State of New York
80 Centre Street
New York, New York 10013

Re: BRADLEY v. WYMAN et al

Dear Mr. Rauch:

Enclosed please find a copy of a motion for leave to proceed _in forma pauperis_ on behalf of the above named plaintiff. A copy was served on Commissioner Wyman by personal service on Alden E. Bevier, Executive Officer at the New York City Area Office on Friday, November 17th, 1967. Felix Infausto, Counsel to the Department of Social Services advised him to accept service and advised me by telephone to provide you with a copy.

I have just received your "Answer" addressed to David Gilman and will provide him with a duplicate.

Very truly yours,

Stephen M. Nagler

SMN:n

150 W. 96 St
NYNY 10025
Feb. 1, 1968

Dear Steve:

Sorry about coming in so close to the deadline, but I've just been swamped. You know.

I've knocked out a memo on the in forma pauperis steno and it is enclosed. The Tatum case is from an annotation and I'll check it out tomorrow morning and call your office if there is anything wrong with it. I'll also get the correct spelling and citation of the other case.

I admit that on the language of Section 1915 alone it would appear that we have a good argument. I just think Section 753 (f) completely wipes us out. I also submit for your displeasure the statement of the Fifth Circuit exactly one year ago in a civil right damage action, Beard, 372 F. 2d 685, 690. (5th, 1967)

I called this a "supplemental" points and authorities, but I don't remember that an original went in.

If you want to put this in, as is or with improvements, I guess you had better call the clerk and warn him that it is coming.

Sincerely,

Henry

Henry A. Freedman

The Columbia University School of Social Work | *401 West 117th Street*
CENTER ON SOCIAL WELFARE POLICY AND LAW
Legal Activities and Research Division
New York, N. Y. 10027
280-4112

May 8, 1968

Stephen Nagler, Esq.
Scholarship, Education
& Defense Fund
164 Madison Avenue
New York, New York 10016

Re: Bradley v. Ginsberg

Dear Steve:

I just saw a note, Litigation Costs--The Hidden Barrier to the Indigent, 56 Georgetown L.J. 516, January 1968, which argues in part for in forma pauperis free stenographic services for pretrial depositions.

Best of luck on the new job!

Cordially,

Henry

Henry A. Freedman

HAF:ct

Dear Commissioner Ginsberg:

We were contacted by Mr. Felder concerning the above matter. On May 25, 1967, we had a conferance with Mr. Felder in which we attempted to clarify the issues and come to an understanding in regards to our letter to you of May 3, 1967. I think the discussion was profitable insofar as we clarified exactly what the issues are in this case. It is our contention that the issue ~~in the Bradly case~~ is ~~not~~ Not whether the Department of Welfare has a right to conduct an eligibility investigation, but what procedures the special investigator must follow in conducting himself. The issue [illegible] ~~In order to resolve the Bradley matter,~~ We suggested to Mr. Felder that the Department issue specific regulations regarding the conduct~~ing~~ of special investigators while ~~in order that a uniform and [illegible] procedure be instituted~~ participating in eligibility investigations. Specifically that a [illegible] client should be given prior notice that a Special Investigator will be visiting her. Also that the Investigator must receive the consent of the client before entering the home and that this consent should not be elicited through the threat of discontinuance of aid. That once the Investigator has gained entrance the verification of eligibility should be based solely upon discussion had with the client and that no attempt should be made to search the home without the explicit prior consent of the client then and there ~~[illegible]~~.

We suggest that regulations be issued ~~that will~~ clearly designating guide lines that Special Investigators should follow ~~in~~ when making their investigations. The above is only meant ~~to~~ be a suggestion and we offer our cooperation in this matter. ~~stand ready, willing and able to draft more precise and detailed regulations.~~ ~~We suggest a regulation that will establish definite criteria that will be used during eligibility investigations. This will mitigate the chances of raising the issue of illegal search.~~

~~In order to properly protect our clients rights, we request a response to this letter within five (5) days from its receipt. If the Department of Welfare will not entertain the establishment of such a regulation, we will have no other choice but to litigate the above matter.~~

The Bradley matter is still pending. We have had no written response and our client is pressing for an early determination. May we please have a reply at your earliest convenience.

//

Form W-4-350M-1128073(66)
Rev. 3/12/59 114

MEMORANDUM

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

TO:

DATE:

FROM:

SUBJECT:

Mrs. Guillermina Resto
511 Van Siclen Ave
Apt 4A
Brooklyn 7

v. 1/10/51)-1500M-1013062(64) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

STORY SHEET

CASE NAME	ADDRESS	BASIC CASE NUMBER
		ADC 2284491
		PAGE NO. 1
RESTO, Guillermina	681 Howard Avenue, Brooklyn	

COMPLAINT

This case came to our attention through a complaint lodged in the Commissioner's office, which states as follows ;

June 24, 1965

Commissioner of Welfare
The Honorable James R. Dumpson
250 Church Street
New York, New York

RE: Resto-Agosto
681 Howard Avenue
Brooklyn, New York
Apt. B3

Dear Mr. Commissioner:

We are writing to you as five irate taxpayers, We have previously notified the Jay Street Branch of the Welfare Dept. and since it is apparent that nothing has been done to this date, we feel that it is our duty to bring the matter to your attention.

The person above noted, residing at the captioned premises, is presently the recipient of Welfare, we feel under false pretenses. This person previously occupied these premises without a husband, and the name in the mail box appeared as "Resto-Agosto." Subsequently, another name appeared as an addition, "Rodriguez." This name has now been removed. It is known that there was no man on these premises, however, it is now noted that a man does arrive every day at approximately 2:00 A.M. and apparently does live there.

It is not our intention to deprive a needy and qualified person from receiving Welfare, but it is quite evident that the facts here prove to the contrary, and should not bepermitted to continue without further investigation. We were aware of this sort of thing, we read and hear it from time to time, but when it ~~si-~~ is brought to the attention of the authorities and nothing is done, it is equivalent to condoning the act. It is our civic duty to bring this to the attention and it is your duty as a public official to see that justice is done. We trust that this information will not be filed as "crank letter," but will bring prompt action from your department.

Respectfully,

"FIVE IRATE TAKPAERS"

CASE SUMMARY

This case first came to our attention January 17, 1963 when the client applied as her husband, Manuel REsto had deserted. The desertion had occured in August, 1962. Since August to the time of application, client was employed as a floor girl for T. Cohen, 845 65th Street, Brooklyn. During the time of employment, her two children, Norma and Edgar, were cared for by a neighbor. However, prior to inital application, her daughter became ill and client had to give up her job and stay home to care for the child.

During the initial application, we contacted the husband who agreed to contribute $15 weekly but would give no information of his residence or employment.

. 1/10/51)-1500M-1013062(64) 114

ISTORY SHEET

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

CASE NAME	ADDRESS	BASIC CASE NUMBER
RESTO, GUILLERMINA	681, HOWARD AVENUE, BROOKLYN	ADC 2284491 PAGE NO. 2

This contribution was met on a regular basis until June 19, 1964 when the husband contacted the Welfare Center and verified that he was unemployed and collecting UIB, He gave as an address 199 Sutter Avenue, Brooklyn.

In February, 1965, ~~mt~~ the contribution, from the husband was made payable to the Department andremoved from the budget. There is no indication of whether this payment is being met at this time.

COLLATERAL VISIT

8/23/65 Since the husband has been known to be a pocketbook worker, we visited the Pocketbook Workers Union, Local 1, 131 West 32 Street and spoke to an officer, Mr. Oglaman who ~~at~~ advised us that Mr. Resto no longer was a member. His membership terminated May, 1964.

COLLATERAL VISIT

8/23/65 We visited the building, 199 Sutter Avenue and spoke to the super, Mr. Nieves whoadvised us that he has been super in this building four months and has no knowledge of a Manuel Resto.

COLLATERAL VISIT

8/23/65 We visited client's building and interviewed the super, Mr. Wilkinson, Apt. 4A. He advised us that the family composition consists of a daughter, a son, client and a man who he does not believe is her husband but is always in the apartment. He described him as about 30 years old and constantly wears dark glasses. He states he wasin the home this morning to repair a leak, but the client was not at home, just the man.He states this man has been around the house, since about December but he does not know his name.

We next spoke to a neighbor in the building who requested that she not be identified who advised us that a man is living in the client's home, that he wears dark glasses, that he goes to work late in the afternoon, and she presumes, comes home early in the morning. She also advised us that the client started working on August 16, though she does not know where. It appears that the man living in the home goes to work about 4:00 P.M. and the client comes home about 5:30.

HOME VISIT

We tried to visit the client's home but upon our knocking, we heard sounds from within the apartment but no one responded. We made repeated efforts to gain contact with whoever was in the apartment. We left a note under the door and waited several minutes and then saw the note pulled in.

We again attempted to gain admittance into the apartment, but none would answer.

HOME VISIT

8/24/65 We again attempted to bisit the home and again heard sounds within the apartment before we knocked but had no one answer the door. We left a note under the door requesting that client contact us and tell us in detail abot her employment, etc.

ev. 1/10/51)-1500M-1013062(64) 114

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

STORY SHEET

CASE NAME	ADDRESS	BASIC CASE NUMBER
RESTO, Guillermina	681 Howard Avenue, Brooklyn	ADC 2284491
		PAGE NO. 3

COLLATERAL VISIT

8/24/65 We visited the landlord at 663 Howard Avenue. He collects the rent from the client and states her rent is alwasy paid on time and paid in full on the first of the month. He was reluctant to commit himself but did admit that he knows that a man resides with the client. He was genuinely unaware that the client had been employed. He did not know the name of the man but stated that as long as the rent is paid, he minds his business.

TELEPHONE CONTACT

8/24/65 We received a phone call on marginal date from client's daughter, requesting that her case be closed as her mother got a job. This was taken for us as we were not in the office at the time but the call came after we had left the note under the door.

RECOMMENDATION

8/25/65 We are returning this case to the Welfare Center with the following recommendations and notations: We are recommending immediate closing of this case as dient is employed, the details of which are unknown. However, we do know she has been employed since August 16. We have verified that a man is present in the home and has been since December, 1964 and that this man is employed. We are therefore submitting a refund summary for total monies received since January 1, 1965.

rgent

In the event of re-application, we would want to know who this man is and detais of his employment and income and the details of client's present employment. This came may not be re-opened without the prior approval of B.P.A.

P. HECHT/eg BPASPECIAL UNIT
D. 8/25/65
T. 8/26/65

8/30/65 Case from BPA - Mrs Brown

7 8/60

9/8/65 Refund summary in sum of $1482.40 received by Resource.

10/51)-1500M-1011062(64) 114

STORY SHEET

CASE NAME	ADDRESS	THE CITY OF NEW YORK DEPARTMENT OF WELFARE
		BASIC CASE NUMBER
		PAGE NO.

4/66 To Resource C. O. – E. Russell

AB/60

/1/66 Returned –

mof/60

Thurs morn the bel rang from dowstairs

THE BELL RAN F DS i went to wind to see if k playing with bell awh
when i look saw landl i asked the lan if k play biwht bell he answered yes
and went ~~XXXXXX~~ on into the building. He let Mr. Heck in
YES I KNOW HE LET MR HECK IN....YES..
You thought somebody was coming in to see you...you thought somebody was coming up
YES HE TOLD ME SOMEBODY WAS RINGING THE BELL AND

Thrus morn the be r fr down and you tell me what you ~~see~~ SAW
THE BEL RA FROM DOWN STAI RS: I WENT TO THE WINDOW TO SEE IF THERE WERE KIDS PLAYING WITH THE BELL. WHEN I LOOKED OUTSIDE I SAW THE LANDLORD. I ASKED THE LANDLORD IF THE KIDS WERE DOWN THERE PLAYING WITH THE BELL. AND HE ANSWERED YES AND WENT ON INTO THE BUILDING. HE LET MR HECK IN
He told you he let Mr. Heck in?
YES I ________ HE LET MR. HECK IN.
So you really did not know who (he) was coming upstairs to see you?
You ________ somebody was coming up?
YES. Well, HE TOLD ME SOMEBODY WAS RINGING THE BELL AND HE WOULD LET THEM IN. AND AHE WENT ON INTO THE BUILDING BEFORE I HAD A CHANCE TO TELL HIM NOT TO LET ANYBODY IN THE HOUSE. UNLESS THEY NOTIFY ME OR CALL ME.
So it was the landlord_____________?
YES.
Then what happened.
WELL, THE MEN CAME ON UPSTAIRS AND RANG THE BELL UPSTAIRS. AND I WENT TO THE DOOR. AND I ASKED WHO WAS IT. AND HE SAID HE WAS MR. HECK.
What did he look like?
UHHH, HE 's ABOUT FIVE-SIX, KINDA SHORT SIZE
Negro? White? Puerto Rican?
HE WAS A WHITE MAN.
He had hair on his head? Bald?
NO , HE HAD HAIR ON HIS HEAD.
Dressed in a suit?
YES.
Had a tie on?
YES.
Then what happened to you?
UHH, HE SAID HE WOULD SEND UP FROM CENTRAL OBFICE TO REVIEW MY CASE AND HE SHOWED ME IDENTIFICATION: A CARD, HAD HIS PICTURE ON IT. HE WALKED ON INNA HOUSE AN SAT DOWN ON THE COUCH.
Walked into the house?
BES.
Didn*t he say anything to you eould I come in and talk to you inside
HE DIDN*T SAY ANYTHING. AFTER HE SHOWED ME HIS IDENTIFICATION , I WAS JUST STANDING AT THE DOOR AND I DNT SAY ANYTHING, HE DIDN*T SAY ANYTHING- HE WALKED ON INTO THE HOUSE.
Did he lead the way in , or did you walk in froмt of him or did you walk behind him.
HE LED THE WAY, AND I WALKED BEHIND HIM. AND I LOCKED THE DOOR. AND HE WENT ON INTO THE LIVINGROOM AND SAT DOWN
Then what happened? What did he say to you?
HE SAID HE WAS FROM CENTRAL OFFICE AND HE CAME TO REVIEW MY CASE. WOULD I BE INTERESTED IN A JOB OR TRAINING.. like $70 OR $75 DOLLARS A WEEK TO GET OFF WELFARE AND I TOLD HIM YES..
Then what?
HE WAS TALKING ABOUT POSSIBILITIES OF TAKING EXAMS OR GOING TO THE TELEPHONE COMPA
What did you say?
WELL, IT TOLD HIM YES I WOULD BE INTERESTED...TO TO GET OFF WELFARE. AND HE ALSO SAID wouLD I RATHER BE OUT WORKING AND GETTING A JOB RATHER THAN BEING AFFILIATED WITH THE CLIENT'S GROUP. AND I ANSWERED HIM YES.
And all he talked about was you getting off welfare and getting work?
WELL, HE STARTED OUT WITH GETTING A JOB AND TRAINING AND BETTERING MYSELF. AND THEN HE SAID I'M GOING TO ASK YOU A PERSONAL QUESTIONA AND YOU DON'T HAVE TO ANSWER IT. AND HE SAYS IS A MAN LIVING WITH YOU? AND I ANSWERED NO. AND THENHE SAID, ARE YOU SURE. AND I SAID YES I'M SURE.
Now let me ask you he asked you about a man living with you and you said No. And he said are you sure and you said I'm sure. Then what happened?
THEN HE ASKED ME ABOUT MY CHILD. WAS MY CHILD IN WEST VIRGINIA WITH MY MOTHER. AND I TOLD HIM NO.
Did he ask you anthing more about the child?
HE ASKED ME WHERE WAS THE CHILD. AND I TOLD HIM MY GIRL FRIEND TOOK THE CHILD TO THE CLINIC.
Did he ask you what clinic.

HAVE A RECORD OF MY CHILD HAVING AN APPOINTMENT. AND I TOLD HIM YES.
What kind of day was it that day?
IT WAS RAINING CATS AND DOGS.
Did he say anthing about the rain.
YES, HE SAID ANYBODY WITH THEIR COMMON SENSE WOULD NOT TAKE A CHILD OUT ON A DAY LIKE TODAY. i aNSWEREDHE HAD GOINE OUT ON WORSE DAYS THAN THAT BECAUSE THE SHOTS WERE VERY IMPORTANT.
Did he ask you who your girl friend was?
YES HE ASKED ME WHO SHE WAS AND WHERE DID SHE LIVE.
What reply did you make?
IT TOLD HIM HER NAME ~~WASXXXXMEX~~ AND SHE LIVED ON THE WEST BIDE.
What is her name?
HER NAME WAS EDDIE MAE GREEN. AND SHE LIVED ON MORRIS AVENUE, NEAR THE HOSPITAL.
Then what? Did he say that he would call the clinic?
AFTER THAT. Wer3 you
YES I WAS. AFTER THAT HE WANTED TO USE MY TELEPHONE. HE USED THE PHONE.
You have an extension? In the bedroom or in the kitchen?
~~IN THE BEDROOM AND~~ IN THE KITCHEN. THE PHONE'S IN THE BEDROOM.
So which one did he use?
HE USED THE PHONE IN THE KITCHEN. BUT FIRST THE CONVERSATION WAS HE SAID HE WAZ CALLING INTO CENTRAL OFFICE AND HWWHOEVER HE SPOKE TO HE WAS TO ASK THEM TO HAVE THE CHECK READY FOR HIM BY A CERTAIN TIME.
HE HUNG UP THE PHONE, HE CAME BACK INTO THE LIVINGROOM. AND HE SAID, CAN I SEE YOUR APARTMENT.
There was no more said about your child.
HE GOT UP AND START WRTITING AND STARTED TO CATCH UP T O THE HOUSE.
He said what.?.can I see your apartment ?
WELL, AFTER THE PHONE CALL HE SAID CAN I SEE YOUR APARTMENT.
What did you say? Did you say anythin ?
I SAID YES.
Is that all you said. Can you remember everything. Is it vague...or..clear.
WELL, IT"S SORTA VAGUE: I DON"T REMEMBER EXACTLY WHAT I SAID WHEN HE SAID THAT LET ME SEE YOUR APARMENT
Do you remember what you fwere feeling hwhen he said that.
I WAS WONDERING WHY HE WANTED TO LOOK THROUGH MY APARMTNE AND WHAT HE WAS LOOKING FOR.
Say anything to him about this feeling that you have.
NO I DIDNT BECAUSE FROM THE START I WAS EXCITED
Why were you excited?
WELL, HE WAS FROM CENTRAL OFFICE AND I REALLY HAE NHAD N O DEALINGS WITH CENTRAL OFFICE. I KNEW NOTHINGABOUT AN INVESTIGATION OR ANY OTHER KIND OF THING.
You said that you were excited I ask you why you were ex
I NEVER HAD ANY DEALINS WITH CO AND I THOUGH IT SWAS A MATTER OF PROCEDURE WHAT HE WAS DOING AND I HAD NOTHING TO HIDE.
When you said that it was a matter of procedure. So you thiought that you had to cooperate or else....
OR ELSE MY CHECKS WOULD BE DISCONTINUED
Did he ever say anything to you about your checks being discontinued?
INDIRECTLY
Well, how did he do that?
OH HE STATED TO ME THAT I WOULD RECEIVE MY MAY 1 CHECK
That you would or would not receive it?
THAT I WOULD RECEIVE MY NUMBER ONE CHECK...AND I REPLIED DOES THAT MEAN I WOULD NOT GET THE CHECK FOR MAY 16TH AND HE SAID NO, BUT LETS HOPE YOU WONT NEED THE CHECK FOR MAY 16th
Well, what did he mean?
I SHOULD GET A JOB RIGHT AWAY. IF I GOT A JBO OI WOULD NOT NEED A CHECK ANYWAY.
In other words you got the impression that if you did not ge t a job they would cut yo u off public assistance.
YES.
Was this from the things he said to you?
YES.
Or was this from the way you understood the problems were?
WELL, FROM THE THINGS HE SAID IS THE WAY I UNDERSTOOD THE DEPARTMENT WORKS. UNLES I LET HIM SEARCH THROUGH THE HOUSE AND FIND WHATEVER HE WAS LOOKING FOR THAT MY CHECKS WOULD BE DISCONTINUED. SO I LET HIM DO IT FOR FEAR THAT MY CHECKS OWOULD BE DISCONTINUED.
I see. Now, if you would have known that your checks would not be discontinued and that you would not have to let him search through the house--you can speculate if you had known what you know now, honestly, thinking back, do you think you would have let him go through th e house.
NO, I WOULD NOT EVEN HAVE LET HIM COME INTO THE APARTMENT WITHOUT A SEARCH WARRANT OR A POLICEMAN OR SOHE SUCH. I WOULD NOT HAVE LET HIM INTO MY HOUSE AT ALL IF I" HAD KNOWN WHAT I know NOW.

WITHOUT HIM GIVING ME A NOTICE OE AN APPT
Did you ever say to him, you know, "Why didn't you call me and let me know when you were coming?"
NO
What time was it all was it when he rang the downstairs bell.
IT WAS ABOUT 9:30.
Could it have been 9 o'clock maybe? Could you be mistaken in the time? Was it 10 o'clock. Are you sure it was 9"30?
I'M POSITIVE. IT WAS ABOUT 9"30 AND THAT"S THE USUAL TIME THE LANDLORD COMES AROUND EVERY DAY. CHECKING ON THINGS. AND I NOTICED MY CLOCK IN THE PROCESS OF GETTING DRESSED.
And what happend when he got off the pohone...the first thing he said to you?
THEN HE PROCEEDED TO SEARCH THORUGH THE HOUSE.
Tell me what he said
CAN I SEE YOUR APT AND I SAID YES.
I Then what
HE WAENT INTO THE BEDROOM.AND LOOKED ALL AROUND AND MY WEDDING BAND WAS THERE ON A NIGHTTBABLE. AND HE WSAID. WHOSE RING? I TOLD HIM IT WAS MY WEDDING BAND AND THERE WAS A PAIR OF SLACKS LYING ON THE CHAIR AND HE SAID WHOSE PANTS ARE THOSE? AND I SAID THEY'RE MY SLACKS, THEY'RE NOT PANTS. AND I'LL PUT THEM ON TO PROVE IT TO YOU THEY'RE NOT PANTS.
HE SAID YOU DON'T HAVE TO PUT THEM ON...SO I HELD THEM UP BESIDE ME TO PROVE TO HIM THEY WERE MINE. THEN HE ASKED ABOUT THE CHEST IN THE BEDROOM WHICH IS MY DRESSER AND I KEEP MY CLOTHES INIT. I HAVE IT COVERED OVER WITH A CVOVER AND HE ASKED WHAT WAS UNDER IT. AND I SHOWED HIM WHAT WAS UNDER IT.L...MY UNDERCLOTHES. AND HE SAID WHY DIDN"T I HAVE A DRESSER. AND I SAID WELL THEY GAVE ME MONEY FOR A CHEST AND SAID IT WAS SUFFICIENT. THEN HE LOOKED AROUND THE ROOM AND GAZED OUT THE WINDOW. he
When he looked around what did yhe do. Did you just stand there on the spot...
HE TURNED AROUND AND WALKED OUT OF THE ROOM.
Did he look for a closet?
NO the DOOR WAS OPEN--HALFWAY OPEN--SO HE GLANCED HIS EYES IN THERE.
Wide open?
THE DOOR WAS HALF-WAY OPEN
Did he look under the bed?
NO.
Did he touch anything. A
HE TOUCHED THE RING. HE PICKED IT UP AND ASKED WHOSE RING IT WAS YOU KNOW AS HE WENT AROUND THE SIDE OF THE BED. TO GET OVER THERE.
Anything else?
NO any other
Did he walk around the corner of the room?
NO
Did he look out the window?
NO HE SAW A TELEPHONE THERE AND HE SAID OH YOU HAVE AN EXTENSION. BECAUSE HE USED THE PHONE IN THE KITCHEN.
Is that all the conversation that took place.
YES.
Then where did he walk to?
THEN HE WALKED FROM THE BEDROOM TO A LITTLE HALLWAY WHERE THE BABY'S CHEST IS kAND HE WENT INTO THE BATHROOM. THE FUNNIEST THING HE ASKED ME ABOUT WAS A HIS AND HERS BATHTOWEL SET WHICH I I HAVE THERE FOR DECORATION AND WHICH WAS A WEDDING PRESENT.
What did he ask?
HE SAID, AND I QUOTE, "WHOSE HIS AND HERS?"
And what did you say? Do you remember what you said
I REPLIED IT WAS A WEDDING PRESENT IT WAS MY HUSBAND'S AND MINE AND AI USE IT FOR DECORATION. HE LOOKED UP ON A SHELF IN THE BATHROOM AND ASKED WHERE I GET SO MUCH CSOSMETICS FROM WHERE I GET SO MUCH AND HOW DID I GET SO MUCH PERFUMES. AND I SAID TH ITS NOT PERFUMES ONLY COLOGNE AND AS ~~YOU CAN SEE~~ THE WALLS ARE EMPTY AND THEY"RE SJUST THERE FOR DECORATION. THEN MY JEWISH SYRINGE WAS LYING ON THE SHELF THERE AND HE ASKED ME WHAT WAS IT/
Did he pick it up.
I DON'T REMEMBER IF HE PICKED IT UP OR NOT

?

So you don'at remember if he picked it up
NO
It was lying where?
IT WAS LYING ON A SHELFUNDERNEATH THE MEDICINE CHEST
I see The present chest is over the sink?
YES
Then there's a shelf between the sink and the medicine cabinet?
BUT IT'S CONNNECTED TO THE MEDICINE CABINET
What did he say to you.
OH HE ASKED ME ABOUT THE JEWISH SYRINGE I HAD LYING THERE.
What did he say?
HE SAID WHAT ISTHAT
I EXPLAINEDdTOoHIMmWHATtITtWAs.
EXEXHEXTAKEXITXER.Did he take it up?
NO.
Then what did he do?
HE PUT HIS HAND ONE THE DOOR...AND HE SAYS MAY I LOOK IN
Where
THE DOOR OF THE MEDICINE CHEST
And you said
YES...DO YOU MIND IF I LOOK IN AND I SAYS I DON'T MIND IF YOU LOOK IN SO HE
OPENED THE DOOR AND HE ASKED ME WHAT I NEED SHAVING CREAM FOR AND A RAZOR ...AND
I TOLD HIM THAT I SHAVE MY OWN ARMS AND LEGS AND ON A TOP SHELF IN A CORNER
WHERE YOU HAVE TO GO OUT OF YOUR WAY TO SEE IT I HAXEX HAD A BOX OF NOR-FORMS
THERE AND HE SAID" YOU USE BIRTH CONTROL" AND I ANSW RED NO I DON'T AND HE
REPLIED WHAT DO YOU USE NORFORMS FOR. AND I EXPLAINED T O HIM WHYI USE NORFORMS
..THEN HE PROCEEDED T O EXPLAIN HOW NORFORMS ARE USED...WHAT M
What did he say again..
HE ASKED ME IF I USED BIRTH CONTROL AND I SAID NO..AND HE EXPLAINED TO ME THAT
NORFORMS IS A TYPE OF BIRTH CONTROL AND HE EXPLAINED HOW IT'S USED..WHATXHIS
HEXSAXXTOXYOUXHOWXITXSXUSED
HEXSAIDXAH
What did he say to you how it's used?
HE EXPLAINED THAT ONCE IT'S BEEN INSERTED INTO A LADY IT MAKES A JELLY OR SOMETHING
AND IT KILLS THE SPERM AND IT"S A TYPE OF BIRTH CONTROL.
Did he say anything else about Norforms?
NO, THAT WAS ALL
Did he say anything about his explanation?
NO.
That was the end of it.
Yes.
Were you embarassed about it?
OF COURSE I WAS EMBARRASSED ABOUT IT.. I DIDN'T KNOW WHAT TO THINK. ALL THE
TIME I'M THINKING THIS IS A PROCEDURE BY THE DEPARTMENT OF WELFARE..YOU KNOW..
THIS IS WHAT THE GUY IS IS SUPPOSED TO DO...
Or were you just very very tense.
I WOULD SAY I WAS TENSE.
Did anybody else ever go into your bathroom and go through your personal effects
that way?
NO. NEVER IN MY WHOLE LIFE. NOT EVEN MY MOTHER OR FATHER OR NOBODY.
Did he say anything else about the razor...there was only one ra zor?
THERE"S TWO RAZORS THERE.
He mentioned only the one razor?
OH YES HE ASKED WHY DID I HAVE TWO. AND I EXPLAINED TO HIM ONE IS A SINGLE EDGE
A ND ONE IS A DOUBLE..THE SINGLEEDGE WAS VERY OLD I"VE HAD IT FOR MANY MANY YEARS.
I DON"T EVEN USE ITANY MORE...IT WAS JUST THERE.
Did he say anything about you having shaving cream in there or...
YES ..I HAD NOXZEMA SHAVING CREAM AND HE WANTS TO KNOW WHY DO I USE NOXZEMA
SHAVING CREAM...
What did you say.
WELL I SAID I DIDN"T KNOW ANYTHING ELSE TO USE. CAUSE IT WAS MEDICATED.
What did he say?
HE JUST MUMBLED SOMETHINGUNDER HIS BREATH.
Did he say anything to you about a man using the razor blade?
NO.
Did he close the cabinet chest.
YES. THEN HE CLOSED THE DOOR.
And then what?
HE LOOKED BEHIND THE BATHROOM DOOR. AND I HAD A COUPLE OF BATHROBES HANDING THERE
AND HE JUST ...DIDN"T SAY ANTHING....AND HE PUSHEDTHEMDOORBACK.AND AS HE WAS
WALKING OUT OF THE BATHROOM INTO THE LIVINGROOM H E SAID TO ME "WHAT DO I THINK
THE DEPARTMENT SHOULD DO WITH ME...
Did he mention anything else...any other idems you may have.
NO.
Did he say anthing about toothbrushes.?
OH YES HE DID. I FORGOT. I HAVE FOUR TOOTHBRUSHES ON A HOLDER THERE. AND HE

AND YOU COULD SEE WHAT THEY WERE USED FOR: ONE WAS USED FOR MY TOENAILS AND
ONE WAS FOR MY FINGERNAILS AND THE OTHER'S A HARD-AND-SOFT FOR MY TEETH
Did he say anything about that
NO HE SAID WHY DID I HAVE SO MANY TOOTHBRUSHES, IMPLYING YOU TKNOW THAT ~~THERE WAS SOMEBODY ELSE LIVING HERE~~ THEY WERE SOMEBODY ELSE'S
Did he touch anything else in the bathroom...the bowl?
NO, HE DIDN"T TOUCH ANYTIHING ELSE IN THE BATHROOM
How long did he stay in the bathroom talking to you.
BETWEEN 5 and & 7 MINUTES.
A full 5 & 7 minutes on the clock ..ad long as we've been talking on this tape?Almo
YES.
Were you glad when you got out of the bathroom.
YES I WAS HAPPY TO GET OUT OF THERE...YOU KNOW YOU FIGURE IT'S YOUR PERSONAL
THINGS AND ALL. NOBODY LIVES THERE WITH ME!
What?
NOBODY LIVES THERE WITH ME, SO I FEEL I'M FREE TO WANT TO LEAVEANYTHING LYING AROUN
AND IT'S NOBODY'S BUSINESS BUT MINE. I WAS REALLY QUITE UPSET...
By what?
BY ALL THE INTIMIDATION.
You really felt you were intimidated?
YES I REALLY DO.
Then what happened.
AFTER LEAVING THE BATHROOM HE CAME INTO THE LIVINGROOM. AND THEN HE SAID WHAT
D O I THINK THE DEPARTMENT SHOULD DO WITH ME. SO I ASKED HIM WHAT DID HE MEAN
AND HE REPEATED(HE WAS LIKE WANDERING AROUND THE FLOOR) WHAT DO YOU THINK WE SHOULI
D O WITH YOU. AND I SAID WHAT HAVE I DONE. THEN HE MENTIONED THE FACT THAT WELL
YOUR CHILD IS IN W. VA. WLE WE KNOW THIS FOR A FACT.
Where did this take place.
HE WAS STANDING RIGHT BY THE CRIB.
Where is this crib, in the livingroom or the bedroom.
IN THE BEDROOM.
Where there any sheets on the crib?
YES.
Was the diaper pail around.
THE DIAPER PAIL WAS IN THE BATHROOM. WELL I GUESS YOU HAVE
WAS your powder and lotions--things you use for/the baby--there?
OH YES, DEFINITELY. HE ALSO MENTIONED THE FACT/YOU HAVE FOOD IN THE CABINET FOR
THE BABY ALSO. I TOLD HIM YES, I DID HAVE FOOD FOR HIM
We'll get back to the fact: we ll he knows the baby's in West Virginia.
NO GUESSING ABOUT IT...SOOIsSAID LET"S BACK UP A LITTLE BIT. AND I PROCEEDED
TO TELL HIM THE TRUTH ABOUT THE CHILD.
Well, what was the truth.
HE ASKED ME. WELL THE TRUTH WAS: I TOOK THE BABY TO WEST VIRGINIA. THE BABY
WAS NOT WITH MY MOTHER IN LAW.
When.
ON MARCH 26th.
The baby was with you until March 26?
YES. THE BABY WAS WITH ME.
Or was he with your mother in New York.
NO MY MOTHER IS NOT IN NEW YORK. THE BABY WAS WITH ME UNTIL MARCH 26.. AROUND
easTER WEEKEND. ..I TOOK THE BABY DOWN. MY MOTHER-IN-LAW SENT ME THE FARE.
AND THE REASON I TOOK THE BABY THERE WAS FOR ME TO GET A JOB AND TO GET ON MY FEET
I DIDN"T HAVE ANYONE TO TAKE CARE OF THE CHILD WHILE I WAS HERE IN NEW YORK--TO
BABY SIT FOR THE CHILDWHILE I WENT OUT TO LOOK FOR A JOB...I ASKED MY MTOER-IN LAW
IF SHE WOULD HELP ME TO GET ON MY FEET. SHE SAID YES. AND I TOOK THE BABY THERE
AND I CAME BACK AND I SEARCHED FOR A JOB IN A TRAINING PROGRAM--IT WASN"T ANYTHING
PERMANENT
You said that you had come back to find a job
I CAME BACK AND I GOT INTO THIS TRAINING PROGRAM--A FRIEND OF MINE TOLD ME ABOUT
IT...AND I ENQUIREDAND SPOKE REVEREND HAWKINS...AND HE TOLD ME ABOUT THIS PLAN HE
HAD THERE, THERE IN THE CHURCH...IT WAS A PART TIME POSITION WITH 40 DOLLARS A WEE
Did he tell ;you it was an OEO program.
NO, IA SSUMED IT WAS.
Did anyone tell you it was an OEO program.
NOBODY TOLD ME IT WAS OR IT WASN"T AND I NEVER ASKED. UNDER THE CIRCUMSTANCES AN
THE WAY I WAS HIRED, I ASSUMED IT WAS.
What were the circumstances?
WELL, IT WAS A NEW PROGRAM THAT THEY WERE TRYING TO START. AND I KNOW THEY HAVE
A LOT OF PROGRAMS THEY"RE TRYING TO START--NEW PROGRAMS.THIS IS A NEW PROGRAM THA
I WOULD BE STARTING INTO. THAT"S WHY IA SSUMED IT WAS A POVERTY THING. I SPOKE
TO HIM AND HE EXPLAINED TO ME WHAT IT WAS: AND PERHAPS IF I WAS INTERESTED I
COULD BE A TRAINEE AND I WOULD OFFICIALLY START WORK MAY 1. THIS WAS THE FIRST
OF APRIL WHEN I MET REVEREND HAWKINS. PRIOR TO THAT ;I WAS GOING

AND I HAD NO LUCK. AND I STARTED INTO THE TRAINING PROGRAM.
Is this what you told Mr. Heck? Did you tell him again?
NO, I DIDN"T TELL HIM, mMR HECK , ANYTHING ABOUT THE TRAINING PROGRAM.
Well, what did you tell him?
I TOLD HIM THAT THERE WAS A POSSIBLITY OF ME GETTING A JOB
Then you didn't tell him that you'd been training for three weeks then?
NO. POSSIBILITY OF GETTING A JOB, GETTING A PERMANENT POSITION. THAT I HAD TO LOOK INTO IT A LITTLE BIT FURTHER BEFORE I WOULD BE HIRED PERMANENTLY. BUT I DIDN"T MENTION THAT TO HIM.
So you said ;you told Mr. Heck that there was a possibility for your getting a permanent job.
RIGHT, I MENTIONED THAT TO HIM. HE SAID -- I TOLD HIM I HAD AN APPOINTMENT TODAY ABOUT THE JOB HE SAID THAT IF I WAS ACCEPTED I SHOULD TAKE THIS JOB AND CALL HIM LATER IN THE AFTERNOON SO HE"D KNOW IF I WERE ACCEPTED ORXXXXXXB....I DID CALL HIM IN THE AFTERNOON TO TELL HIM I WAS BXXXXXXXXX ACCEPTED AND THAT I WOULD OFFICIALLY START ON MAY 1.
Well, now after you explained to him that the baby was in West Virginia, id did he say anything about what you said before?
NO. onLY THIN HE SAID WAS THE REASON I WAS NOT ABLE TO RECEIVE PUBLIC ASSISTANCE WAS BECAUSE THE CHILD WAS AWAY AND THAT THE DEPARTMENT DOES NOT SUPPORT A CHILD THAT IS RESIDING OUT OF THIS STATE, AND I SAID THE CHILD IS NOT RESIDING OUT OF THIS STATE, THE CHILD WAS TAKEN THERE TEMPORARY AND I WOULD BE BRINGING HIM BACK.
Did you say you would be supporting the child?
YES.
Did he ask you how?
YES , HE ASKED ME HOW. AND I SAID I WOULD BE SENDING MONEY EVERY WEEK FOR THE CHILD. AND HE ASKED ME FOR THE MONEY ORDER STUBS. AND I SAID I DID NOT SEND A MONEY ORDER: I JUST PUT CASH IN A LETTER AND MADE IT SO IT WOULDN'T LOOK CONSPICIOUSX. AND HE ASKED ME WAS I AFRAIDOF SENDING MONEY THROUGH MAIL AND I SAID NO. HE ASKED ME HOW MUCH I SENT. AND I TOLD HIM THE FULL ALLOWANCE: THE CLOTHIN ALLOWANCE FOR THE BABY AND THE FOOD FOR THE BABY.
And did you actually send the full allowance?
YES, I DID..
How often?
EVERY TWO WEEKS I SENT THE MONEY FOR SUPPORT OF THE CHILD
The child was with your inlaws down there.
YES THE CHILD WAS WITH MY INLAWS
Are your inlaws poor or well-to do??
THEY"RE OLD PEOPLE AND THEY"RE ON CHECKS
They're on what: Social Security?
I can't hear you.
NO, JUST SOCIAL SECURITY.
Now when you first told him about your working and about supporting the child, did he say anthing else to you.
HE SAID TO ME THAT IF I GOT A JOB THAT DAY, HE WOULD STRAIGHTEN THINGS OUT AND HE WOULD PUT IN THE RECORDS THAT THE CHILD WENT TO WEST VIRGINIA THE DAY BEFORE HE WENT TO VISIT MY HOUSE AND THAT I SHOULD GET THIS JOB AND THAT HE WAS GOING TO WORK EVERYTHING OUT. HE MADE AN APPOINTMENT FOR ME TO COME TNTO TO SEE HIM THE FOLLOWING TUESDAY TO GET INTO A TRAINING OR SOME TY E JOB OR SOMTHING LIKE THIS
What did he mean about what he was going to get straightened?
AS FAR AS THE XXX CHILD BEING AWAY, I GUESS: AND THAT WAS LIKE THE CRIME I HAD COMMITTED. AND HE SAID HE WOULD NOT SAY EXACTLY HOW LONG THE CHILD HAD BEEN AWAY
Did he say that you had committed a crime?
I IDIDN"T COMMIT A CRIME ..HE JUST SAID THAT I WAS NOT ELIGIBLE TO RECEIVE PUBLIC RELIEF ASSISTANCE.
Did say anthing else to you.
OH, THAT I SHOULD KEEP IN CONTACT WITH HIM AND THAT HE WAS GOING TO GET ME ON MY feet AND STRAIGHTEDN ME OUT.
Then what happened? Did he get up?
HE WAS STANDING ON HIS FEET WHEN HE WAS SAYING THIS, AND HE MAKE AN APPOINTMENT FOR ME TO COME AND SEE HIM AND HE GAVE ME THAT PIECE OF PAPER.
Did he say that he was your investigator now?
I SAID, WELL, WHAT IF I NEED SOMTHING OR SOMETHING LIKE THAT , who DO I CONTACT AND HE SAID FROM NOW ON IN I CONTACT HIM FOR ANYTHIGN I WANT. I XXXX CALL THE XXXXXX XXXXXXX LCOAL CENTER. DONT
Then what. Did he leave?
THEN HE LEFT THE APARTMENT
Didn't he make any more telephone calls?
YES, HE MADE A SECOND TELEPHONE CALL. I DON'T RECALL EXACTLY WHERE HE FIT IT IN, BUT HE DID MAKE A SECOND CALL. XXX
Was there anything else about how you felt? How did you feel when he left?

AFTER MR. HECK LEFT MY APARTMENT , I THINK I RAN FROM ONE ROOM TO THE OTHER... ALL OVER MY HOUSE. I DON"T KNOW WHAT I WAS DOING: I WAS LIKE CRACKING UP, THAT"S WHAT I WAS DOING. AND AT THAT VERY MINUTE I FELT LIKE, WHAT, JUMP OUT OF THE WINDOW. AND I SAID , WELL, YOU KNOW THE BUILDING IS NOT HIGH ENOUGH. AND THEN I THOUGHT JUST CLOSE ALL OF THE BLINDS , LOCK MYSELF IN THE HOUSE AND NEVER WALK OUT AGAIN. THAT"S EXACTLY HOW I FELT. A ND I WAS VERY NERVOUS AND SHAKEN. I DIDN"T WAST TO ACCEPT THE FACT THAT ALL THIS HAD REALLY HAPPENED, THAT THIS GUY HAD SEARCHED ALL THROUGH MY HOUSE, ASKED ALL THESE PERSONAL QUESTIONS .....ETC. anOTHER THING I FORGOT TO MENTION, WHEN HE WAS ASKING IF A MAN WAS STAYING WITH ME, HE ALSO ASKED IF I HAD ANY ROMANCES. AND ISAID, WHAT DO YOU MEAN, AND HE SAID, DO YOU HAVE ANY ROMANCES. AND I SAID, WELL, : I HAVE A FR...WELL I'M A HUMAN BEING...AND I HAVE A FRIEND. I DON"T KNOW WHAT YOU MEAN ABOUT DO I HAVE ANY ROMANCES
Did he say anthing else about the subject? Sex?
NO.
Did he ask if you were pregnant?
NO. ,
Did he ask anything about pregnancy at atll?
NO.
Did he tell you about himself?
NO.
I THINK IT WAS IN THE BATHROOM. IF I RECALL CORRECTLY, HE MENTIONED THE FACT THAT HIS WIFE USES THE NORFORMS...OR SOMETHING.
Did he say how many children he had.
I DON"T KNOW, HE MAY HAVE.
After he left, did you cry.
I WAS TOO UPSET TO CRY.
Then what did you do, did you go to the job you were right away/
WELL IT WAS AFTER LL:30 WHEN HE LEFT. I DIDN"T GET TO THE JOB BEFORE 12. HE LEFT AROUDND 11:30.
~~XXXWASXXTHXXXX2XXXHRRRSXX~~
He ~~XXXX~~ was ther e about 2 hours?
WELL HE GOT THARE AT 9:30 AND HE DIDN"T LEAVE UNTIL ABOUT LL!30. AND I DND"T GET TO WORK UNTIL ABOUT 5 AFTER 12 or 12 O"CLOCK.

AFTER HE LEFT, I CALLED THE JOB. I CALLED REVEREND HAWTHORNE AND EXPLAINED TO HI M THE SITUATION AND THAT IF PERHAPS THE DEPARTMENT OF WELFARE CONTACTED HIM THAT HE COULD EXP,AIN TO THEM EXACTLY WHAT MY SITUATION WAS. THAT IT WAS A TRAINING PROGRAM AND WOULD HE TELL THEM. HE SAID HE WOULD. AND AFTER THAT MR HECK HAD CALLED THE REV. AND HE DIDN"T SPEAK TO HIM , SHIMSELF, BUT TO THE SECRETARY AND THE SECRETARY TOLD HIM, HE ASKED HER WAS I EMPLOYED THERE AND HOW LONG....'AND HOW MUCH DID I MAKE ANS SOFORTH AND SO ON...AND SHE ANSWERED HIM I WAS EMPLOYED AND I MADE $40 A WEEK AND I'D BEEN THERE SINCE APRIL4 SHE WAS NOT AWARE OF TEHE OL WHOLE SITUATION AT ATLL. SHE DIDNIT KNOW ANYTHING. SHE DIDNIT HAVE ANYTHING TO DO WITH HIRING ME OR ANYTHING...ALL SHE DID WAS WRITE OUT THE CHECK ...THE REV HAWKINS HAD NOT TOLD HER , IN CASE THE DEPARTMENT CONTACTED HER, TO EXPLAIN WHAT THE SITUATION WAS AN D THAT I WOULD BE IN THE TRAINING PROGRAM, RECEIVING $40 A WEEK. AFTER SPEAKING WITH THE REVEREN:D, I CALLED THE LAWYER, MR. DAYFIELD, EXPLAINING TO MR. TILGHMAN WHAT HAD HAPPENED.
Can you think of anything else you were feeling...did you hav e other thoughts.
WHILE I WAS THERE I WAS NUMB. THE FACT THAT HE LEFT ..WHEN I GOT SICK.
Did you hear everything he said to you. Or sometimes did you not hear?
IT"S LIKE I DIDN"T. I HEARD AND I DIDN"T. IT"S LIKE WHEN HE CAME TO THE DOOR. I RECOGNIZED THE FACT WHEN HE SAID ~~XXXX~~ DEPARTMENT OF WELFARE FROM CENTRAL OFFICE I THOUGHT OH WELL THIS IS A BIG GUY AND HE WAS SENT OUT BY THE COMMISSIONER AND I GOT UPSET AND EXCITED FROM THAT POINT ON
Did he say he was sent out by the commissioner?
RIGHT. TO REVIEW MY CASE.
Did you ever contact him again? Have you ever heard from Mr. Heck?
I CALLED HIM.
No, did he ever call you?
NO HE HAS NEVER CALLED ME.
He said he would make an appointment?
RIGHT.
Have you ever contacted him ...or has he wver contacted you since?
NO.
Has anybody from Central Office contacted you since?
NO.
Did you receive that May 1 check?
YES.
The May 16th check?
NO.
Yo u haven't received any incoming asistance since May 16th?

had said etc., to the May 1

THAT'S RIGHT.

* 8

Did you receive a check today?

~~MAXXX~~ NOT SINCE MAY 1ST

NO, I DIDN"T GET A CHECK TODAY.

So you applied for a job, right?

YES.

And you didn't hear anything abou t were you accepted or not accepted?

NO.

Did the worker say he would call you today?

HE SAID HE WOULD NOTIFY ME?

Have you ever received any notifications?

NO.

The check would be recieived in the mail, right?

RIGHT. I CHECKED IT ALREADY.

Can you think of anything else you want to tell me in connection with what happened to you with Mr. Heck?

Anything you felt , thought about, any questions you have. Anything you want to comment on?

Did he look under the bed.

NO.

Did he open your fridigaire?

NO , HE DIDN"T LOOK AT ANYTHING IN THE KITCHEN. HE MAY HAVE LOOKED WHILE HE WAS USING THE PHONE, BUT HE DIDN"T QUESTION ANYTHING IN THE KITCHEN:

That's it??

I HOPE AND I WISH AND I PRAY. THAT WHAT HE DID AND THE LIES THA T HE HAS TOLD ABOUT MY CASE ...THAT IT WILL COME BACK TO HIM ONE WAY OR ANTOTHER...UP TO HIS KIDS OR HIS WIFE OR HIS FAMILY. BECAUSE HE WAS VERY ONERY, VULGAR, AND I JUST CAN"T THINK OF THE WORDS TO DESCRIBE MR. HECK.

What lies did he say?

WELL, I CAN GO ON TO SAY THAST AFTER I CANCELLED THE APPOINTMENT WITH MR. HECK AND MR. GILMAN HAD IN TURN HAD CONTACTED MR. HECK CONCERNING THE MATTER BETWEEN MR. HECK AND MYSELF, HE RIGHT AWAY HAD MY CHECK DISCONTINUED. HE NOTIFIED THE TREMONT WELFARE CENTER TO STOP MY CHECKS. AND IN THE BEGINNING IT WAS WITH NO EXPLANATION FOR MY UNDERSTANDING. AND WHAT MY CASEWORKER TOLD ME . THAT THEY WERE NOTIFIED TO STOP MY CHECKS RIGHT AWAY. THEY STOPPED THE CHECKS AND THEY DIDN"T EXPLAIN WHY. AND LATER ON THEY RECEIVED A PHONE CALL SAYING STOP THE CHECKS BECAUSE THE CHILD HAS BEEN AWAY ~~FROMXTHE~~ SINCE CHRISTMAS, AND THAT WAS NOT TRUE. I AND THAT MRS. BRADLY WAS WORKING RECEIVING $40 checks SINCE THE FIRST OF APRIL. ~~BUTXTHATXWASXNOTXTRUEXXXXXXWAS~~ BUT I RECEIVED A LETTER OF DISCONTINUANCE.

Why was he vulgar.

OH, IT HINK FROM THE QUESTINS HE ASKED ME ABOUT BIRTH CONTROL AND ROMANCE THAT HE WAS VERY VULGAR....AND WHEN HE SAID ABOUT ROMANCES, IASSUMED HE WAS TALKING ABOUT RELATIONS OR INTERCOURSE OR SOMETHING AND THAT WAS THE WAY I TOOK IT. BUT HE DIDN"T WANT TO COME RIGHT OUT AND SAY IT.

I PERSONALLY DO NOT BELIEVE THAT THE DEPARTMENT ALLOW S SUCH INVESTIGATION.

I ALSO THOUGHT THAT THE SUPERVISORS AT THE HIGHER LEVEL DO NOT KNOW WHAT THE CASEWORKERS OR TEHE INVESTIGATORS--HOWEVER YOU DESCRIBE--EXACTLY WHAT THEY DO AND SAY WHEN THEY GET TO THE CLIENT"S HOME.

W at is one of the things that upset you most about this business?

HIM SEARCHING THROUGH MY APARTMENT.

Walking from room to room.

RIGHT. IN MY BATHROOM, OF ALL PLACES. AND ASKING ME ABOUT THE NORFORMS, ETC.

He didn't touch anything.

EXCEPT THE RINGS?

And he didn't ask you about the pads.

EXCEPT ON THE DRESSER.

What did he ask you about that?

THE UNDERWARE. I TOLD HIM IT WAS UNDER CLOTHES AND MY NIGHTGOWN.

I SHOWED HIM WHAT WAS UNDER THERE. HE ASSUMED IT WAS MEN"S CLOTHING...BUT I SHOWE HIM.

Did he walk over"

WELL, HE WAS STANDING RIGHT NEXT TO ME. HE DIDN"T HAVE TO WALK OVER. I SHOWED HI

Can you think of anything else?

NO.

Sandy Bradley - Thurs - 6/1/67

A ~~xx~~ was going to training program [says it was 9:35]

A was combing her hair. Door bell ran incessantly [front door buzzer requesting A to buzz lock]. A went to the window & looked out - A saw the LL. [A thought it was kids playing around, LL left Mr. Hecht in]. Then Hecht rang A's bell. A looked through peephole & asked who was it. Hecht said he was from "Dept of Welfare Central office". Then A opened the door, Hecht introduced

SMITH & CROWDER v. D.C. BOARD

COMPULSION OF ENTRANCE TO INVADE PRIVATE HOMES AND INTRUDE IN PRIVATE AFFAIRS COMPRISES AN UNCONSTITUTIONAL AND ILLEGAL ACT.

When an agent of the welfare department applies pressure to a welfare client and succeeds in obtaining entrance into the recipient's private home and interrogating the recipient about personal matters, there are two main areas of constitutional rights that are violated. The first is the right to security in a private home and privacy. The second is the right not to be compelled to accept visits by unwanted guests or intruded upon, particularly when constitutional rights are infringed.

1. The Constitution Guarantees a Right to Security in a Person's Home, Privacy about Personal Matters and a General Personal Privacy, Particularly Appropriate in the Case of a Welfare Client.

> The poorest man may in his cottage bid defiance
> to all the forces of the Crown . . . the King
> of England cannot enter -- all his force dares
> not cross the threshold of the ruined tenement.

so spoke William Pitt discussing the right of a citizen when an agent sought entrance for enforcement of an excise tax on cider. This spirit underlies the Fourth Amendmant, as evidenced in the approving quotation in Miller v U.S. 357 US 301 at 306 (1958). Appellants contend that their poor tenements and poor homes, are as important to them as a man in his cottage and that the Fourth Amendment "marks the right to privacy as one of the unique values of our civilization." McDonald v U.S. 335 US 451 at 453 (1948).

In the case of Griswold v. Connecticut 381 US 479 (1965) other ancient and honorable principles were once again reaffirmed to have continued vigor, major importance, and complete contemporary application.

> The principles laid down by this opinion ... affect the very essence of constitutional liberty and security. [T]hey apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers that constitutes the essence of the offense, but it is the invasion of his indefeasible right of personal security ...

quoting Boyd v. U.S. 116 US 616 at 630, Griswold v. Connecticut supra at 484.

Griswold held that there was an unconstitutional invasion of privacy when doctors were prohibited from advising and assisting people in personal birth control plans. The decision was bottomed on a notion that a right to privacy was implicit or {"penumbral"} throughout a number of admendments to the Constitution and with an explicit reference to the Ninth Amendment which reserves the rights of the people to the people when not explicitly delegated to the government. If the precedential extent of Griswold is not clear, its importance is certain. Concerning personal matters and privacies, government action will be severely limited. The Constitution establishes a right to non-intrusion and dignity, particularly in matters concerning sexuality.

Historically, the right to privacy has had one of its clearest manifestations in the right to security in a person's home, with the concomitant right not to be bothered by others, no matter what their motives or justifications. In Monroe v. Pape 365 US 167 (1961) the Supreme Court held that an invasion of a home, a search, and ensuing arrest constituted a deprivation of the rights, privileges, and immunities secured by the Constitution. (at 170) A tort action would therefore lie. The particular right to privacy in a home therefore, is a clear constitutional right. This right is so important, that at times it has seemed almost to counterbalance the right of free speech. Compare Breard v. Alexandria 341 US 398 (1950) with Martin v. Struthers 331 US 641 involving decisions as to whether the right not to be pestered by peddlers was more important than the freedom to disseminate literature. The lesson of these cases is clear. The home is a private realm. Invasion of its privacy is illegal and not likely to be justified.

The idea of searching a married bedroom and inquiring into sexual matters was found by the court in Griswold v. U.S. supra to be so wrong that it stated "the very idea is repulsive to the notions of privacy surrounding the married relationship." This pronouncement is persuasive that an invasion of a constitutional right to privacy surrounding personal matters in a home is even ? more repugnant, if possible, than normal invasion not connected with pursuit into place but intruding into sexual intimacy. Moreover, it explicitly states that the government has no right, NO justification or prerogative to inquire by either eye or by word into people's private sexual activities. The court in McDonald v. U.S. supra stated "the right to privacy was deemed too precious to entrust in discretion [of police] . . . power is a heady thing." See further, Johnson v. U.S. 333 US 11 at 14 (1947). The constitutional framework, the history of the right to be secure in the home, the recent pronouncements about the extent and meaning of privacy, all demonstrate that one of the rights of the people not taken from them by the government but reenforced by constitutional amendments, is that of the right to security in a home, security from invasion, and security from spying -- all precious and central in American democracy.

2. The Constitution Commands that No One be Compelled to Forfeit his Constitutional Rights to Privacy in His Home and that, in Particular, Entry by Threats Into Claimants' Homes is Illegal and Unconstitutional.

There is no question that a threat to cut off welfare benefits is a coercive threat for the purpose of gaining entrance. Lymumn v. Illinois 372 US 528 (1963) held that there was coercion and no consent when policemen threatened to take away welfare benefits in order to gain entry for the purpose of searching a home. The unanimous court found such a threat vitiated any consent to entry and search. (page 534)

The welfare workers often explicitly and always implicitly used this threat to compel the "invasion into the premises." Such a compulsion recalls the words of Yick Wo v. Hopkins 118 US 356 (1886) at 367:

> [T]he very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another seems to be intolerable ...

The threat of deprivation of means of living is as illegal and unconstitutional as it is repugnant. In the words of Justice Holmes speaking for a unanimous court in Union Pacific Railroad Company v. Public Service Communication 248 US 67 (1918):

> It is the characteric of duress properly so called ... [to make] a choice ... according to interest ... to choose the lesser of two evils.

For a welfare client, the fear of termination of any support may make the surrendering of a constitutional right (no matter how deeply desired) the choosing of a lesser evil.

In general, before a court will find a waiver of a Fourth Amendment's right of privacy in a home, there must be convincing evidence of that waiver. Neusin v. District of Columbia 115 F2 690 (1940) at 694. In this case it was also remarked that the ignorance of the extent and meaning of the Fourth Amendment's right to privacy and security in one's own home was a factor to be weighed in evaluating voluntariness of permitting entry. The Court concluded that there was no waiver. Welfare clients in the District of Columbia are unlikely to know the extent of their Fourth Amendment rights against those who determine whether they deserve subsistence or not. Their fear could never constitute a waiver.

See in general, Herter v. U.S. 27 F2 521 (1928) and citations for a careful examination of what any invitation to enter might mean. The Supreme Court in Amos v. U.S. 255 US 313 (1921) found it unconstitutional coercion by deputy collectors of the Internal Revenue Service who said they had come to look over the premises for "violation of the revenue law". The Court held that there was no waiver but rather a coercion and violation of the right to privacy and security in a private hoem. A fortiori the demand to enter with all the threats about livelihood itself is unconstitutional coercion. In general, see Judd v. U.S. 190 F2 649 (1957) on coercing consent to enter. See also Nelson v. U.S. 208 F2 505 (1953). For the general law on the extreme presumption against waivering constitutional rights, see Johnson v. Zerbst 304 US 458 (1938) and Carnley v. Cochran 369 US 506 (1962). Welfare claimants faced with demanding workers fear for their very lives. Under the Constitution, as well as decency, entry so obtained is quite clearly obtained by Unconstitutional coercion.

Much article should be
cited; [illegible] [illegible]
of development

3. Conditioning of Benefits by Threats is Unconstitutional When Applied to Welfare Claimant's Right to Select Visitors in Their Own Home.

Not only is the coercion of entry unconstitutional but also even the making of the threat itself is forbidden by the Constitution. For, it is established law that the government cannot constitutionally impose extreme conditions on the distributions of benefits when constitutional liberties are involved.

Clarify

The leading relevant case is Sherbert v. Verner, 374 US 398 (1963) where the Supreme Court held that a 7th Day Adventist was entitled to unemployment compensation benefits although through religious motives, she had turned down jobs involving Saturday work. Reasoning that to deny benefits in such circumstances would be to punish her for her religious beliefs the court stated: "[T]o condition the availability of benefits upon this appellant's willingness to violate ... her religious faith effectively penalizes the free exercise of her constitutional liberties ... [There is] no doubt that liberties may be infringed by the denial of or placing of conditions upon a benefit or privilege" at 406. In the present case, the facts are much stronger, since people presently receiving benefits are faced with surrendering their rights in order to ensure continuation of the benefits whereas in Sherbert v. Verner, the Court ordered the beginning of payments to an individual because the rule operated in her case to infringe her liberty. Here the practice necessarily involves infringing Constitutional rights since it is privacy that is the object of the practice and is imposed after eligibility has been established.

No state may "exclude ... [individuals] because of their faith, or lack of it, from receiving the benefits of public welfare legislation." *Everson v. Board* 330 US 1, 16. (1946). In an area involving free speech, a withdrawal of tax benefits will be found Unconstitutional in terms of due process (where burden of proof is wrongly put) because we place such a high value on Constitutional rights. *Speiser v. Randall* 357 US 513 (1958). *Sherbert v Verner*, supra stated that *Speiser v. Randall*, *supra* meant that "the imposition of such a condition upon even a gratuitous benefit when free speech is involved is unconstitutional."

Under the general rubric of *Everson*, which establishes the constitutional impossibility of welfare exclusion based on religious expression, *Sherbert* holds that when a particular application of a statutory exclusion affects religious expression, it is unconstitutional, explicitly acknowledging that other constitutional rights (i.e., free speech) are to be dealt with as religious expression was in that case. We must conclude, therefore, that to condition benefits on the surrender of 4th Amendments rights is prohibited by the Constitution. Not only is an invasion of privacy by such a threat of discontinuance of benefits unconstitutional but also the very formulation of such a threat is a prohibited act. Welfare clients may not have their privacy invaded and the particular means of coercion is unconstitutional in and of itself.

4. A Search by a Welfare Officer Violates the Constitutiinal Right to Privacy and the Right to Exclude Unwanted Guests and be Protected from Unwanted Scrutiny.

Just as it is unconstitutional and illegal to compel entry into a private residence under the circumstances of this case, and just as it is unconstitutional to threaten the continuing of benefits upon the surrender of freedoms, so too is it unconstitutional to engage in these searches of a person's private dwelling. Such a conclusion emerges clearly from a consideration of the major cases involving searches upon private premises.

The restriction against entry to search is couched broadly and extends to many people, even those who have direct property interest in the premises. In Chapman v. U.S. 365 US 610 (1960) the court in reasoning to the illegality of an entry and search and seizure concluded that a landlord has no right, in the absence of an express covenant, to forcefully enter demised premises to view waste. (page 6) Clearly, the landlord's interest in his property is a more direct one than a caseworker's interest in client's conduct. Similarly, in U.S. v. Jeffers 342 US 48, the use of an assistant manager to enter a hotel room was found to fall athwart the 4th Amendment's restrictions. Yet a hotel manager's interest in the conduct of guests and conditions of rooms is certainly more direct than a caseworker's interest in a client's behavior. There seems to be little doubt therefore that the welfare department's connection with the client is not sufficient to justify the right to search the premises.

Just as a search may not be effecuated by coercion so too a search under the pretense of a friendly call is prohibited. In Gouled v U.S. 255 US 298 (1921) the pretense of a friendly call which was a device to obtain evidence was found an illegal search and seizure. A search carried out by "stealth, or through social acquaintance or in guise of a business call" is still a search. (at 300) Just as interest in the property does not justify a search no more can continuing relationship, or claim or pretense of a friendly relationship justify that search. Nor can fear of official authority of a continuing government program justify that search. Amos v. U.S. supra found coercion on part of deputy collectors for the Internal Revenue Service an illegal search when they came to search the premises, saying that they were looking for "violations of the revenue law." Neither property interest nor personal relationship nor statement of interest in violation of federal programs can justify an entry or make an illegal search in a person's private home constitutional.

There are many reasons why a search is considered constitutionally repugnant beyond the fact of an invasion of a constitutional right or compulsion to forfeit that right. Some examples of other obnoxious elements are specified in Frank v. Maryland 359 US 360 (1958). Frankfurter asserted for a majority the right to self-protection:

> "[S]elf-protection: the right to resist unauthorized entry -- which has as its design the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property.

The decision Frankfurter reached in the Frank case was that the requirement of a search warrant for searching private premises is not necessarily needed outside of searches for criminal purposes. The decision did not, however, explicitly overrule Agnello v. U.S. 269 US 20 (1925) which states:

> The search of a private dwelling without a warrant

> is in itself unreasonable and abhorrent to our laws . . . it has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest.

In this light, perhaps the case should be read as stating the absence of a search warrant or other authority to enter is only justifiable in certain circumstances although there is no constitutional requirement of search warrants per se outside criminal procedure. Frankfurter specified those abuses for searching that would render any search unconstitutional. It is very important to have "due regard for every convenience of time and place" page 366-67. Midnight searches and forcing of entry. pp 366-7 These factors, present in welfare searches are factors that would have led Frankfurter, and the other four members of the court who concurred with him, to find those searches unconstitutional.

Beyond those characteristics of a search which render it constitutionally unacceptable are other factors before a civil search can be contemplated. First, there must be a compelling reason for the search. (p. 371) In the Frank case, it was the maintenance of community health jeopardized by the specific dangers of rats and disease. (p. 372) The evidence pointing to the fact that Frank had created such a health hazard was clear. (p. 372) Finally, the search for evidence was such that it would not predicate criminal liability. (p. 368) Frank, no matter how read, would prohibit searches by caseworkers on claimants' private homes for the purposes they are employed and for the means utilized. In Eaton v. Price 364 US 263 (1960) at 269 Justice Brennan, writing for four of an equally divided court considering the right to refuse the entry of building inspectors, stated that one of the factors involved in Frank was that the inspector was

> looking for a specific violation, and where he had, and was able to demonstrate considerable grounds to believe it existed . . .

Taking all these factors together, the fact that no evidence obtained would have criminal effects; the fact that there was a matter of grave community health importance; the fact that there was no midnight search; no attempt to coerce entry but regard for convenience of place and time, Frank stands for the proposition that these are essential elements before a court can even consider the constitutionality of a search. In the District of Columbia a search by the welfare department can have criminal consequences, District of Columbia Code 3-167 (See, for example of such a prosecution the case of Blackmone v. U.S. 151 A2 191 (1959)) Welfare claimants do not jeopardize community health nor collide with the rights asserted by any other individual. Cf. West Virginia v. Barnette 319 US 643 (1943) at page 630. The actions are coercive, there is no consent, the time and place are inconvenient. The welfare intrusions are rightly termed "midnight searches." In particular, there is the prohibition against generalized drag-net searches Eaton v. Price supra (see Lankford v. Gelston 4th Cir. No. 10, 384 June 3, 1966 for the granting of an injunction to prevent such generalized searches)

In short, Frank further strengthens the absolute Constitutional prohibition against coerced entry, oppressively timed intrusions, searches with disastrous and possibly criminal consequences. The Constitution prohibits searches of those with property interests, those with continuing personal relationships, and those who under government programs seek entry. Even stronger is the prohibition when the searches have the characteristics Frank condemned.

It should be noted that the extent to which Frank is valid law, in general, and applicable law in particular for the District of Columbia is not totally clear. Frank v. Maryland, supra was decided when Wolf v. Colorado 330 US 25 was the law governing the land. Under that decision, the Fourth Amendment did not apply directly and completely to the states as it did to the federal government but was rather applied according to a looser standard of fundamental justice. That case was overruled in Mapp v. Ohio 367 US 643 which might mean that the 14th Amendment would not be applied more strictly and more consistently with Agnello. Moreover, in the District of Columbia, the governing law may still be D.C. v. Little 178 F2 13, (1949) which held it a constitutional right to refuse to unlock the front door to a health inspector. Judge Prettyman for the court stated that:

> [n]o matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate had authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time or opportunity to apply to a magistrate.

and concluded that: the right to privacy shall not be invaded except in criminal cases. Recent cases after Frank continue to cite this case with approval. Gatlin v. U.S. 326 F2 666 (1963) at 671. This may be because the District of Columbia may have stricter search and seizure principles under the 4th Amendment than other jurisdictions. Ford v. U.S. 352 F2 927 (1965) at 935. Certainly if Frank rested on a statement of general law rather than the 4th Amendment for federal purposes, it would not control the District of Columbia but rather D.C. v. Little would. When

Good – needs to be reworded

the welfare department sends inspectors at odd hours to invade privacy and compel entry with possible severe effects on the claimants, the department violates the constitution and all the cases decided under it. The Supreme Court has often condemned the humiliation of exposure to a probing public eye, as it has a compulsion to act against will justified on public interest. The court, in Sherbert v. Verner, supra stated that before exercise of freedoms could be infringed at all, there must be a compelling state interest. Once again its language is relevant. The conditions in these cases of Welfare Department's invasion of privacy on departmental policy is reminiscent of the situation described by Justice Jackson in West Virginia v. Barnette 319 US 640 (1943).

> The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual . . . The sole conflict is between authority and rights of the individuals.

Historically, courts have been eager to prevent any type of compulsion brought to bear on individuals. The government had been prohibited from forcing students to salute the flag. West Virginia v. Barnette, supra. The government had been prohibited from forcing American students to "accept public instruction only". Pierce v. Society of Sisters 268 US 510 at 535. So too, the government has been prohibited from preventing the instruction of German in high school, Meyer v. Nebraska 262 US 390. The courts have found themselves cast into severe doubt and turmoil even over questions where lack of state intrusion would meann death for the person intruded upon. Application of President and Directors of Georgetown University 331 F2 1010 (1964). Courts have evidenced an extreme hesitation in accepting any confession obtained by anything approaching coercion. Miranda v. Arizona 34 Law Week ---.

Miranda etc should be given in bigger way - take from our [illegible] brief

Before compulsion can be justified, there must be a showing of a compelling interest. Not merely "a rational relationship to some colorable state interest . . . only the gravest abuses endangering paramount interest give occasion for permissible limitation. Thomas v. Collins 323 US 516." Sherbert v. Verner supra at 406. In general, of course, as Griswold v. Connecticut, supra states:

> . . . governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms ' NAACP v. Alabama 377 US 288, 307" at 485

One of the reasons for this rule is, of course, that "the official's measure of his own need does not often square with [justice]." Frank v. Maryland supra Douglas dissenting at page 382 citing "In re Oliver 333 US 258, In re ~~G~~robe?n 350 US 330. (Reluctance to allow the untrammeled excitment of petty officials to govern constitutes one of the reasons why the law requires magistrates to control~~ling~~ issuance of search warrants. U.S. v. Lefkowitz 285 US 452 (1932).) The welfare department should well recall the words in West Virginia v. Barnett establishing that the 14th Amendment protects "against the state itself and all its creatures . . . non who act under the color of law is beyond the reach of the constitution" at 637, 638. The law in this area appears plain. The constitution commands that people are left free from governmental compulsion to the extent that when people are compelled there must be a specific essential state interest which can only be achieved by these means -- an interest involving other individuals' rights and means consistent with due process and dignity. When an alternative method to protect the rights of other individuals and achieve community well being can be found, it must be found. To compel invasions, to compel entry, to compel information, to intrude, to scrutinize are all condemnable acts. The right not to be compelled is a right predicated on the fact that the court condemns consent obtained by threats based on deprivation of unconstitutional rights, searches made without particular purpose or specific suspicion and compulsion not necessary for the perpetuation of a legitimate government purpose.

SUMMARY

The constitution recognizes and specifically protects a right to privacy, particularly in the home, and a right not to be compelled. Before these rights may be infringed by the effect of actual practices, there must be a powerful reason, perhaps based on fear of criminal acts, or perhaps in contrast to overriding social values such as free speech or freedom from disease, which reason justifies as the only practicable method of compulsion and entry which still must be effectuated with order and commensurate with dignity and due process. Appellants contend that not only are these factors of justification not present in the case before the court to justify the effects of welfare investigations of this sort but that in general, a state program based on compulsion, invading privacy, infringing on personal matters is condemnable without even looking at the constitutionally cognizable effects. The constitution condemns a general program of searches, a systematic invasion of privacy, a common coercion of consent, a widespread intrusion into individual lives. Appellants submit that the effects and nature condemn the program of invasions, that the procedures taint it beyond acceptability, and that the values they assert are paramount and deserving of protection.

ES ✓
JG ✓
JW ✓
SW —
BG —
AT —
SM —
BR —

POINT III

WELFARE DEPARTMENTS AND THEIR AGENTS MAY NOT CONDITION WELFARE BENEFITS UPON ABANDONMENT BY RECIPIENTS OF THEIR CONSTITUTIONAL RIGHTS TO PRIVACY AND TO FREEDOM FROM UNREASONABLE SEARCHES. THIS COURT SHOULD REVERSE THE COURT BELOW AND DIRECT THAT A TRIAL BE HELD.

In Part I _supra_, we reviewed the leading cases which have held that governmental "rights" or "benefits" or "gratuities" or "privileges" cannot be conditioned upon an abandonment of constitutional rights by recipients or upon other arbitrary and unreasonable conditions. In this section of the Brief we will demonstrate that to condition welfare grants upon giving welfare department investigators "permission" to enter into the recipient's home during Sunday morning, in the evening and at other odd hours is to create precisely the type of illegal condition which falls within the ban of the Constitution.

Initially, however, it is appropriate to note that certain of the propositions made hereafter are apparently subject to some dispute over their factual relevance. Thus, the Defendants claim that no mother in the District "is subject to having benefits terminated or in any other way altered by the mere refusal to allow investigators to come into their homes." (R. p.). While we are prepared to argue that, on the face of the matter, the Defendants' claim cannot be true (because if it were, and the relevant mothers were informed of that fact, few mothers would allow special investigators into their homes on Sunday mornings or in the evening so that the investigators may look for evidence upon which the mother's grant could be terminated and criminal proceedings instituted), we nevertheless seek a trial of this action in part to demonstrate that mothers do in fact lose benefits for refusing entry, and - more importantly - that the mothers who permit entry do so because they deeply fear that otherwise their benefits will be cut off. Further, we seek a trial to demonstrate that the Defendants and their agents are well aware that the mothers' fear of losing benefits is the very reason they are given "permission" to enter and search the mothers' homes at odd hours. It is for this reason that Plaintiffs seek an injunction requiring Defendants to desist in such searches unless they fairly and accurately inform each mother whose home is to be searched that her benefits will be unaffected if she refuses (or unless a search warrant is obtained.)[*]

In the opinion of the court below, however, none of these issues are relevant. It is Judge Holtzoff's view that the welfare department has a right to insist on any investigation, search, questioning, etc., it [illegible] wishes to insist upon as a condition of benefits, and that it is the welfare recipient's "right" to refuse to submit to the investigation and thereby give up his benefits.

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[*] There are other issues upon which we seek to give evidence at the trial. For example, we seek to demonstrate the disastrous effects upon sound family and social relations created by Defendants' search policies. We seek also to demonstrate through evidence the various humiliating tactics used by Defendants such as: the eavesdropping by investigators with their ears to the doors of recipients; the blatantly sexual and irrelevant nature of the inquiries made by Defendants; the absence of information as to eligibility rights on the part of recipients, including Plaintiffs, and the general educational level and other factors which reduce to absurdity any expectation that welfare recipients are in a position which allows them to refuse entry to welfare investigators when they are not expressly informed by the investigators that they may do so without loss to their grant.

Thus (R. p.   ):

> The Court: Of course the welfare recipients have a perfect right to refuse to submit to an investigation which they consider oppressive, but in that event, on the other hand, the agency has the right to take them off the rolls. In other words, I don't think and I don't suppose the Corporation Counsel will claim, that investigators of the agency have a right to insist on making the investigation. I presume . . . that any recipient of welfare funds has a right to refuse to submit to investigation, but then the funds can be withheld from him.

And again (R. p.   ):

> Mr. Marlin (for plaintiffs); Your honor, the next question then becomes whether somebody who applies for public assistance and/or whose application is granted must surrender constitutional rights that other persons have.
>
> The Court: I don't think he does. You don't have to argue that he shouldn't be required to surrender constitutional rights. He cannot be compelled to surrender constitutional rights . . . Of course, he cannot be compelled to answer questions, but on the other hand, if he refuses to give the information he can be taken off the relief rolls . . .*

Thus, the court below presents Plaintiffs and all welfare recipients with an even more severe "choice between the rock and the whirlpool," which choice was, just this past January, condemned by the Supreme Court. See *Garrity v. New Jersey*,   U.S.   , 87 S. Ct. 616, 618 (1967); also *Spevack v. Klein*   U.S.   , 87 S. Ct. 625   , 17 L. Ed. 2d 574 (1967). Plaintiffs' choice is to abandon their rights to privacy and freedom from search of their homes, on the one hand, or face the whirlpool of starvation for themselves and their children, on the other hand. If forfeiture of a policeman's or lawyer's job is too "costly" a "sanction" for the assertion of the right against self-incrimination by a policeman or lawyer, then surely termination of the welfare grant which feeds, clothes and shelters her children is too "costly" a "sanction" or "penalty" for the welfare mother who seeks to enforce her right to be secure in the privacy of her home. Cf. Spevack, supra, at p. 577. Such a "choice" is inherently coercive and the "antithesis of free choice to speak out or remain silent" Garrity, supra, at p. 618. In Spevack at p. 628-9, the Supreme Court stated:

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* And again, R. p.   : "The Court; . . . I think the agency in charge of relief has a right to say that unless you let your investigator enter your home and look around, we will cut you off the roll."

> Like the school teacher in Slochower v. Board of Education, 350 U.S. 551, and the policemen in Garrity v. New Jersey. . . . lawyers also enjoy first-class citizenship."

(text continued on next page)

Our contention is that first class citizenship applies to the welfare client as well. Our argument in this point is directed towards the position taken by the Court below that welfare clients have to choose between such conditions as allowing searches of their homes on Sunday mornings, on the one hand, or continued welfare benefits (albeit with a loss of privacy, possible consequent criminal prosecution, etc.) on the other. In particular, we will demonstrate:

A. That there is a constitutional right to privacy which has been and continues to be violated by the policies and practices of Defendants;

B. That the searches conducted by the Defendants are among the unreasonable searches specifically condemned by the Fourth Amendment, unless conducted with search warrants or valid consent;

C. That Defendants do not obtain search warrants for the searches and that the "consent" obtained from plaintiffs and members of their class is inherently coercive and in violation of the constitutional commands; and

D. That such coercive searches and investigations are repugnant to the purposes and requirements of the Social Security Act as well as the Constitution.

A. The Constitution Guarantees a Right to Security in a Person's Home, Privacy about Personal Matters and a General Personal Privacy, Particularly Appropriate in the Case of a Welfare Client.

> The poorest man may in his cottage bid defiance to all the forces of the Crown . . . the King of England cannot enter -- all his force dares not cross the threshold of the ruined tenement.

So spoke William Pitt discussing the right of a citizen when an agent sought entrance for enforcement of an excise tax on cider. This spirit underlies the Fourth Amendment, as evidenced in the approving quotation in Miller v. U.S. 357 U.S. 301, at 307 (1958). Plaintiffs contend that their poor tenements and poor homes are as important to them as to any man in his cottage and that the Fourth Amendment "marks the right to privacy as one of the unique values of our civilization." McDonald v. U.S., 335 U.S. 451, at 453 (1948).

The right to privacy, however, exceeds the bounds of the Fourth Amendment. In Griswold v. Connecticut, 381 U.S. 479 (1965), the ancient and honorable principles underlying the right to privacy were once again reaffirmed as having continued vigor, major importance, and complete contemporary application. Said the Court (381 U.S. at 484):

> The principles laid down by this opinion . . . affect the very essence of constitutional liberty and security. [T]hey apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers that constitutes the essence of the offense, but it is the invasion of his indefeasible right of personal security . . .

quoting Boyd v. U.S. 116 U.S. 616 at 630 (1886).

Griswold held that there was an unconstitutional invasion of privacy when doctors were prohibited from advising and assisting people in personal birth control plans. Among other thins, the Court found that "[t]he very idea" of searching a marital bedroom - even with a search warrant - "is repulsive to the notions of privacy surrounding the marital relationship" (381 U.S. at 495-6).

The decision was bottomed on a notion that a range of rights to privacy were implicit or "penumbral" throughout a number of amendments to the Constitution, specifically referring to the Ninth Amendment which reserves the rights of the people to the people when not explicitly delegated to the government. If the precedential extent of Griswold is not clear, its importance is certain. Concerning personal matters and privacies, government action will be severly scrutinized.

Historically, the right to privacy has had one of its clearest manifestations in the right to security in a person's home, with the concomitant right not to be bothered by others, no matter what their motives or justifications. In Monroe v. Pape, 365 U.S. 167, 170 (1961) the Supreme Court held that an invasion of a home, a search, and ensuing arrest by police officers, constituted a deprivation of the rights, privileges, and immunities secured by the Constitution; a tort action would therefore lie. The particular right to privacy in a home, therefore, is a clear constitutional right. This right is so important, that at times it has seemed almost to counterbalance the right of free speech. Compare Breard v. Alexandria, 341 U.S. 622 (1951), with Martin v. Struthers, 319 U.S. 141 (1943), involving decisions as to whether the right not to be pestered by peddlers was more important than the freedom to disseminate literature. The lesson of these cases is clear. The home is a private realm. Invasion of its privacy is illegal and not likely to be justified. See also McDonald v. United States, 335 U.S. at 455; Johnson v. United States, 333 U.S. 10 at 14 (1948).

Under the Constitution, any invasion of the citizen's "right of personal security" (Griswold, supra at 484) must meet, at the least two tests. First, governmental control over and intrusion into constitutionally protected areas must always be based on a compelling state interest. Not merely "a rational relationship to some colorable state interest . . . [but] only the gravest abuses endangering paramount interest give occasion for permissible limitation." Thomas v. Collins, 323 U.S. 516; Sherbert v. Verner, supra, at 406.* Second, even if the governmental purpose is legitimate and is substantial enough to meet the test stated above, that purpose

> may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. (Griswold v. Connecticut, supra at 485, citing NAACP v. Alabama, 377 U.S. 288, 307. See also Keyishan et al. v. Board, _______ U.S. _______, 35 LW 4152, 4153 (Jan., 1967).)

The Defendants' practices do not meet either of these tests. The Defendants can invoke no compelling state interest whibh warrants their invasion of recipients' homes and their violation of the last preserve of each recipient's privacy. Insofar as welfare officials need to force entry into recipients' homes in order to investigate alleged welfare "fraud", they can effectively compel entry by the one time-honored and constitutionally acceptable means.

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*~~On this~~ basis, state governments have been prohibited from forcing students to "accept public instruction only". Pierce v. Society of Sisters, 268 U.S. 510, at 535 (1928). So too, state governments have been prohibited from preventing the instruction of German in high school, Meyer v. Nebraska, 262 U.S. 390 (1926), or forcing flag salutes, West Virginia v. Barnette, 319 U.S. 640 (1943). The courts have found themselves cast into severe doubt and turmoil even when lack of State intrusion would mean death for the person intruded upon. E.g., Application of President and Directors of Georgetown University, 331 F.2d 1010 (1964).

If probable cause exists to believe that a welfare recipient is is committing fraud, a search warrant can be obtained. If such probable cause does not exist, there can be no ground for compelled entry into the home. As the Supreme Court declared in *Chapman v.* United States, 365 U.S. 610, 615:

> When the right of privacy must yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or governmental enforcement official.

Any policy or practice which permits invasion of the homes of welfare recipients without judicial authorization or without conformity with the other requirements of the Fourth Amendment violates not only the Fourth Amendment, but the broader and even more ancient right of privacy. So too, do requirements that welfare recipients - in the sanctity of their own homes - submit themselves to questions concerning their personal, sexual behavior. Such interrogation is surely far too broad for whatever *legitimate* eligibility criteria for welfare may be shown to exist.

Both Defendants' coerced entry into recipients' homes and their wide-ranging interrogation once in the homes are unconstitutional. Our constitutional framework, the history of the right to be secure in the home, the recent pronouncements about the extent and meaning of privacy, all demonstrate that one of the rights of the people not taken from them by the government but reinforced by constitutional amendments, is that of the right to security in a home, security from invasion, and security from spying - all precious and central in American democracy. The cases which deal with privacy directly or tangentially always establish an area of sanctity protected from scrutiny or invasion - an area of security in one's home and one's personal relationships.

Chapman v. United States,
365 U.S. 612, 613 (1961)

B. The Uninvited Search by a Welfare Investigator Looking For Law Violations at a Time and in a Manner of His Choosing Violates the Fourth Amendment

As noted by the Supreme Court, "Until Agnello v. United States, 269 U.S. 20, 46 S. Ct. 44, 70 L. Ed. 145 (1925) ~~([illegible])~~, this Court had never directly decided, but had "always assumed" that one's house cannot be lawfully searched without a search warrant, except as an incident to a lawful arrest therein." Agnello, however, did explicitly decide that (269 U.S. at 32):

> "The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws."

Insert 2

The prohibition against searches is couched broadly. It extends to many people, and has been applied to many people with more interest in the premises than may be asserted by a welfare department. In Chapman v. United States, supra ~~365 U.S. 610 (1961)~~ the Court in reasoning to the illegality of entry and search and seizure concluded that a landlord has no right, in the absence of an express covenant, to forcefully enter demised premises to view waste. Clearly, the landlord's interest in his property is a more direct one than a caseworker's interest in a client's conduct. Similarly, in United States v. Jeffers, 342 U.S. 48, the use of an assistant manager to enter a hotel room was found to fall athwart the Fourth Amendment's restrictions. Yet a hotel manager's interest in the conduct of guests and conditions of rooms is certainly more direct than a caseworker's interest in a client's conduct.

Nor can a continuing government program justify ~~that~~ search when entry is obtained on the grounds of government interest and not consent. Amos v. United States, 255 U.S. 313 (1921) found coercion on part of deputy collectors for the Internal Revenue Service the illegal element of a search when they came to search the premises, saying that they were looking for "violations of the revenue law." at 315. If internal revenue collectors may not search for crimes, general investigators are obviously forbidden from pursuing on remoter motives.*

Neither property interest nor personal relationship nor statement of interest in violation of laws can justify an entry or search of a home without a valid consent. Only a judicially authorized search warrant can so legitimate a search (and such warrants are not obtained -- nor even sought -- in welfare searches). Such has been the position of the Court in numerous cases beyond those already cited. E.g., Taylor v. United States, 286 U.S. 1 (1932); Johnson v. United States, 333 U.S. 10 (1948) ~~359 U.S. 360 (1959)~~
333 U.S. 10 (1948).

end insert 2.

Frank v. Maryland

The one significant exception to the constitutional requirement of search warrants was set forth in Frank v. Maryland, 359 U.S. 360 (1959). In Frank, the Court upheld searches carried out without warrants under a city ordinance authorizing health inspectors to inspect homes for unsanitary conditions. Because Frank was an exception, we think it appropriate to devote special discussion to it. As we shall see, several reasons compel the conclusion that the Frank case cannot be used to justify the welfare searches here complained of.

Initially, it is relevant to note that Frank ~~must~~ may be considered dubious authority for any proposition at this time. The Supreme Court has recently noted probable jurisdiction and heard argument in two cases in which the issue of whether Frank should be overruled is posed. See Camara v. Municipal Court of San Francisco, probable jurisdiction noted, 87 S. Ct. 47 (196~~1~~6)

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* See also, Gouled v. United States, 255 U.S. 298 (1921), banning searches carried out under the pretense of a friendly call which was a device to obtain evidence; such friendly pretense is not unheard of in welfare search situations.

(see 35 LW 3269 for statement of issues posed), and See v. Seattle, probable jurisdiction noted, 87 S. Ct. 31 (1966). (see 35 LW 3269 for statement of issues posed).[3] Nevertheless, assuming that Frank will not be overruled, the particular lessons of Frank serve to condemn rather uphol the welfare searches here conducted even though it relaxed the search warrant requirement in some cases.

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[3] Aside from the issues raised in Camara and See, it may be appropriate here to suggest that Frank has not been valid law in general, or applicable law in particular for the District of Columbia. Frank v. Maryland, supra was decided when Wolf v. Colorado, 338 U.S. 25, was the law governing the land. Under that decision, the Fourth Amendment did not apply directly and completely to the states, as it did to the federal government, but was rather applied according to a looser standard of fundamental justice. That case was overruled in Mapp v. Ohio, 367 U.S. 643 (1961), which implies that the Fourteenth Amendment would be applied more strictly than general notions of justice and therefore more consistently with Agnello's Fourth Amendment strictures.

In the District of Columbia, the governing law could very well be D. C. v. Little, 178 F. 2d 13, (1949), which held it a constitutional right to refuse to unlock the front door to a health inspector. Judge Prettyman for the Court stated that:

> [N]o matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate had authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time or opportunity to apply to a magistrate.

and concluded that: the right to privacy shall not be invaded except in criminal cases under the circumstances stated above. Recent cases after Frank continue to cite this case with approval. E.g., Gatlin v. United States, 326 F. 2d 666, (1963).

The District of Columbia may have stricter search and seizure principles under the Fourth Amendment than other jurisdictions. Ford v. United States, 352 F. 2d 927 (1965) at 935. (See McNabb v. United States, 318 U.S. 332 (1943) at 341 for proposition and citations to the Federal Courts' role in formulating rules of criminal procedure.) Certainly if Frank rested on a statement of general law rather than the Fourth Amendment in Federal context, D. C. v. Little would control in its place in the District of Columbia.

The continued vitality of Agnello, supra, used as authority in Chapman, supra (decided subsequent to Frank) ~~compels~~ offers strong support for ~~a~~ reading Frank narrowly to state that the absence of a search warrant or other authority to enter is justifiable only in certain special and limited circumstances of community need and proper procedure. These limited circumstances were explicitly set forth in the majority opinion written by Mr. Justice Frankfurter.

First, it is most important to have "due regard for every convenience of time and place." Thus in Frank, there "was no midnight knock on the door, but an orderly visit made in the middle of the afternoon, with no suggestion that the hour was inconvenient" (359 U.S. at 366). In the welfare search, however, inconvenient hours are deliberately picked -- Sunday morning as early as eight A.M.; weekday evenings, etc. Such times are picked for the very purpose of surprise and discovery. The specific mention of midnight searches and convenience of time and places in Frank comes very close indeed to comprising an advisory opinion on the illegality of welfare searches.

Second, the inspection in Frank was for remedial health purposes and not for criminal prosecution or forfeiture. However, searches of the type here complained of are used in the District of Columbia to supply the basis for criminal prosecution. See, for example, Blackmore v. United States, 151 A 2d 191 (1957). The statutory basis is D. C. Code 3-167. The dangers of criminal prosecution is quite clear in welfare inspections. (E.g., in Baltimore alone in February, 1967 over 200 cases of fraud were prepared for prosecutions on evidence coming from investigations of two or three years back. See Baltimore Sunday, February 15, 1967 page C-2). Clearly, with such danger, the Fourth and Fifth Amendments extend into welfare situations where the searches are for evidence that may predicate criminal prosecution. This fact alone condemns the searches. As recently noted by the Supreme Court:

> [T]here can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed from being compelled to incriminate themselves.

Miranda v. Arizona, U.S. , 86 S. Ct. 1609, 1624. (1966).

Third, the reason for the search in Frank was the maintenance of community health is jeopardized by the specific dangers of rats and disease. The evidence pointing to the fact that Frank had created such a health hazard was clear (359 U.S. at 371, 372 Whittaker concuring at 373). The welfare search, however, is not predicated upon evidence of danger to community health or rights of other individuals as such. It is predicated upon suspicion of improper - and fraudulent - receipt of a government grant. Its frequent consequence is not to protect community health but to endanger the health of the welfare recipient and her children through termination of the welfare grant because a "father substitute" is found.* Moreover, decisional authority, as noted earlier, prohibits searches and entry on grounds of alleged property interest or because of interest in law violations in governmental programs. Chapman v. United States, Jeffers v. United States, and Amos v. United States, supra.

Thus no basis whatsoever exists for concluding that welfare searches may be conducted without a judicially authorized search warrant. Rather, all the cases compel one conclusion: either welfare departments must seek and obtain search warrants for their searches, which they admittedly do not, or welfare departments must obtain valid consent for their searches. As we next demonstrate, such consent is also not obtained.

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*Under welfare department regulations, the presence of a "father substitute" creates ineligibility even though said man is not the real father of the children, owes no legal duty of support to the children, and in fact is not supporting the children. See D. C. - DPW - APD Handbook . See also the Complaint in Robinson v. Board,

C. The Constitution Commands that No One Be Compelled to Forfeit His Constitutional Rights to Privacy in His Home and that, in Particular, Entry of Investigators Into Welfare Recipients' Homes Through Express or Implied Threat of Suspension of Benefits Is Illegal and Unconstitutional.

No one doubts that welfare investigators are not invited into the homes they scrutinize,

No ¶ When a welfare investigator shows at the door and expresses his desire to enter, the threat of suspension of benefits hangs over the head of the welfare recipient like the Sword of Damocles. His presence and his speech threaten; fear has already entered before he does. Yet, there is no question that a threat to cut off welfare benefits is a coercive threat for the purpose of gaining entrance. Lynumn v. Illinois, 372 U.S. 528, 534 (1963), held that there was coercion and no consent when policemen threatened to take away welfare benefits in order to gain entry for the purpose of searching a home. The unanimous Court found such a threat vitiated any consent to entry and search.

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That welfare special investigators use such threats (whether explicitly or implicitly) may be inferred from the circumstances of their entry and their failure to inform recipients of their right to refuse entry without thereby affecting their welfare grants. (That the function of such implicit threats is to serve as the prime means of gaining entry will be clear from the evidence Plaintiffs are prepared to present at trial). Compare Neusin v. District of Columbia, 115 F. 2d 690, 694 (D.C. Cir. 1940), where the Court noted that the ignorance of the extent and meaning of the Fourth Amendment's right to privacy and security in one's own home was a factor to be weighed in evaluating voluntariness of permitting entry. The Court concluded that there was no waiver. Welfare clients in the District of Columbia are unlikely to know the extent of their Fourth Amendment rights against those who determine whether they deserve subsistence or not. Their fear could never constitute a waiver. Insert 6 See in general, Herter v. United States, 27 F. 2d 521 (1928) and citations for a careful examination of what any invitation to enter might mean.

The threat of deprivation of means of living is as illegal and unconstitutional as it is repugnant. See Keyishian Keyeshian v. Board, U.S. , , 35 LW 4152, 4156 (January, 1967). cf. Yick Wo v. Hopkins, supra In the words of Justice Holmes, speaking for a unanimous court in Union Pacific Railroad Company v. Public Service Commission, 248 U.S. 67 at 70 (1918):

> It is the characteristic of duress properly so called... [to compel] a choice... according to interest... to choose the lesser of two evils.

For a welfare client, the fear of termination of any support may make the surrender of a constitutional right (no matter how deeply desired) the choosing of a lesser evil.

In the initial part of this Point, we noted that the basis of the lower courts' finding that welfare searches pose no constitutional issue was its view that welfare recipients are properly required to choose between their welfare grants and their constitutional rights to privacy and freedom from searches. We there cited the most recent decisions of the Supreme Court, Garrity and Spevack, handed down in January, 1967, which thoroughly reject such compelled choices between "the rock and the whirlpool." We believe those cases clearly define the necessary conclusion on the so-called "consent" or "waiver" issue here. In addition to what was earlier noted concerning the Court's decisions in those cases, it is appropriate to here review the Court's position on the nature of "coercion."

In Spevack (as in Garrity), the Court emphasized that there was coercion unless the choice to waive the constitutional right (of self-incrimination) was made "in the unfettered exercise of his own will."* If the subject of the state action had "to suffer" a "penalty" for choosing silence, compulsion exists. The Court went on to note (87 S. Ct. at 628):

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* In Garrity, the Court specifically rejected the applicability of the well-known statement [that there is a constitutional right to talk politics but no constitutional right to be a policeman] to a situation where a policeman's job was conditioned upon abandoning his right against self-incrimination so that threat of discharge could be used to obtain incriminating evidence. 35 LW at 4137.

> In this context "penalty" is not restricted to fine or imprisonment. It means, as we said in Griffin v. California, 380 U.S. 605, the imposition of any sanction which makes assertion of the Fifth Amendment privilege "costly"

Coercion with regard to the Fifth Amendment privilege is not different from coercion with regard to the Fourth Amendment. The Court below discussed both interchangeably (See R. p.) and - in the context of this case - properly so. The technique used in welfare searches is that of first-gaining entry, second - searching, third - interrogating. While it may be said that an applicant for welfare agrees to give the department certain information about herself as a condition of aid (primarily her income, the composition of her family, her residence), it cannot be said she "waives" her right not to answer any question about any aspect of her sexual or personal life - particularly in her own home at such times as on a Sunday morning. (It might be added that the additional twist to the welfare search and interrogation technique is to force the recipient to implore any friend who is in her home also to answer whatever questions are asked so as not to endanger her welfare grant.)

The case law has long held, with regard to the Fourth (as with the Fifth) Amendment rights, that waiver or consent must be proved by clear and positive testimony, and that there was must b no duress or coercion. Amos v. United States, supra. The government must show a consent that is "unequivocal and specific" (Karwicki v. United States, 55 F. 2d 222, 226 (4th Cir.)) and "freely and intelligently given" (Kovach v. United States, 53 F. 2d 639, 6th Cir. 1931). In general, see Judd v. United States, 190 F. 2d 649 (D.C. Cir., 1951) on coercing consent to

(D.C. Cir.)

enter. See also *Nelson v. United States*, 208 F. 2d 505 Cir., 1953) (P.C. (cert. denied 74 S. Ct. 40 (1953). For the strong presumption against waiver constitutional rights, see *Johnson v. Zerbst*, 304 U.S. 458 (1938) and *Carnley v. Cochran*, 369 U.S. 506 (1962).

Welfare claimants faced with demanding investigators fear for their very lives. Under the Constitution, entry so obtained is quite clearly obtained by unconstitutional coercion and is therefore as illegal as it is repugnant.

D. The Welfare Department Searches and Other Humiliating Tactics Herein Complained of Are Inconsistent with the Social Security Act.

The United States Department of Health, Education and Welfare, the agency charged with the interpretation and enforcement of the requirements of the Social Security Act, has this past year recognized the inconsistency of the searches, eavesdropping and other humiliating tactics alleged herein with the Social Security Act. Thus, on March 13th, 1966, HEW issued an additional requirement for state (and District) welfare programs receiving federal monies. Transmittal 77 amended the (Federal) Handbook of Public Assistance Administration so as to require, among other things, effective July 1st, 1967:

> 2220. Requirements for State Plans.
> Effective July 1, 1967, a State plan under titles I, IV, X, XIV, and XVI must:
>
> 1. Include policies and procedures for determination of eligibility for assistance or other services that are consistent with the objectives of the program, and that respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964 (see Supplement C), and all other relevant provisions of Federal and State laws, and that will not result in practices that violate the individual's privacy or personal dignity, or harass him, or violate his constitutional rights.

And in §2230 of the (Federal) Handbook, HEW interpreted the requirement as follows:

> The prohibition against a State plan containing policies and procedures for determination of eligibility that will result in violation of privacy or personal dignity, that constitute harassment, or that violate constitutional rights, requires careful and continuing attention to practices and procedures that may result in violations of these rights and principles. By way of illustration, States must especially guard against violations in such areas as entering a home by force, or without permission, or under false pretenses, making home visits outside of working hours, and particularly making such visits during sleeping hours; and searching in the home, for example, in rooms, closets, drawers, or papers, to seek clues to possible deception.

It is, of course, to be noted that the requirement does not ✓ become effective until July 1st, 1967. In no way whatsoever does the prospective nature of the effective date diminish the soundness of §§2220 and 2230 as interpretations of the Social Security Act. It is clear that the purpose of the Act, that of guaranteeing the right of all eligible persons to financial assistance when in need, is thoroughly frustrated and diminished by conditions on eligibility which unnecessarily harass and h humiliate recipients, force them to choose between assistance and privacy in their homes, and otherwise violate their personal dignity.

Not only do Sunday morning searches impede the financial aid purposes of the Act, they emasculate the intent underlying the financial aid program: that of protecting the sanctity of the home. As noted in a leading law review article dealing with welfare searches (see Reich, Midnight Welfare Searches and the ✓ Social Security Act, 72 Yale L.J. 1347, 1360 (1963)):

> Welfare implies dependence. And dependence means that people may more easily be induced to part with rights which they would ordinarily defend. A not uncommon psychology leads those who dispense

> welfare to feel it only just that the beneficiaries give up something in return. To some public officials, opening one's home to inspection evidently seems a reasonable condition to impose on those whose homes are supported by a public agency. In many other ways, subtle and obvious, the recipients of public bounty are made to pay a similar price. They may be asked to observe standards of morality not imposed on the rest of the community. They may be forced to endure official condescesion and prying.

condescension

> It is most unfortunate that the Social Security Act should have become a means, however indirect, for depriving some persons of the privacy guaranteed by the Fourth Amendment. The chief object of the Amendment was to protect the home and, thereby, the integrity of every individual. The object of the Social Security Act was also to protect the home, and to protect independence and self-respect. It undoes the most fundamental purpose of the Act if it is enforced by methods that violate the sanctity of the home and degrade and humiliate recipients. To insist that welfare officials obey the Fourth Amendment is no more than to insist that the high aim of the Social Security Act not be forgotten in the day-to-day difficulties of carrying it out; and to make certain that the Act remains what it was, above all, intended to be - a guardian and insurer of the dignity of man.

We respectfully urge that the lower Court be reversed and the trial of this proceeding ordered, so that Plaintiffs may demonstrate the scope of coercion and violation of the home created by the policies and practices of Defendants.

SUMMARY

The Constitution recognizes and specifically protects a right to privacy, particularly in the home. Further, the Constitution and the Social Security Act condemn a general program of searches, a systematic invasion of privacy, a common coercion of consent, a widespread intrusion into individual lives. PLAINTIFF ~~Appellant~~s submits that the effects and nature OF THE WELFARE SEARCH condemn the program of invasions OF THE HOME, (the home) that the procedures OF SUCH SEARCHES taint it beyond acceptability, and that the values Plaintiff asserts are paramount and deserving of protection.

The decisional law compels a repudiation of the ~~lower court~~'s doctrine that welfare recipients may properly be required to choose between the welfare benefits necessary for the continued life of their children and themselves, on the one hand, and their fundamental rights to privacy and security in their home, on the other hand. WELFARE RECIPIENTS ARE FIRST CLASS CITIZENS

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(D.C. Cir.)

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Not only do ~~Sunday~~ EARLY morning searches impede the financial aid purposes of the Act, they emasculate the intent underlying the financial aid program: that of protecting the sanctity of the home.* As noted in a leading law review article dealing with welfare searches (see Reich, Midnight Welfare Searches and the ✓ Social Security Act, 72 Yale L.J. 1347, 1360 (1963)):

> Welfare implies dependence. And dependence means that people may more easily be induced to part with rights which they would ordinarily defend. A not uncommon psychology leads those who dispense

* DEFENDANTS HAVE VIOLATED AND CONTINUE TO VIOLATE BOTH THE SPIRIT AND LETTER OF THE SOCIAL SECURITY LAW AND REGULATIONS

welfare to feel it only just that the beneficiaries give up something in return. To some public officials, opening one's home to inspection evidently seems a reasonable condition to impose on those whose homes are supported by a public agency. In many other ways, subtle and obvious, the recipients of public bounty are made to pay a similar price. They may be asked to observe standards of morality not imposed on the rest of the community. They may be forced to endure official condescession and prying.

condescension

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DEFENDANTS BE ENJOINED
We respectfully urge that ~~the lower Court be reversed and~~ *
FROM THE CONTINUED VIOLATION OF THE CONSTITUTIONAL RIGHTS OF
~~the trial of this proceeding ordered, so that Plaintiffs may~~
~~demonstrate the scope of coercion and violation of the home~~
~~created by the policies and practices of Defendants.~~

* THE PLAINTIFF AND ALL OTHERS SIMILARLY SITUATED.
~~AND THAT~~

AUTHORIZATION

I, Mrs. Synester Bradley, DO HEREBY AUTHORIZE SEYMOUR BARRACK, ESQ., David Gilman ____________, OF COUNSEL, ASSOCIATED WITH THE LEGAL AID SOCIETY, UPTOWN OFFICE, 230 LENOX AVENUE, NEW YORK, NEW YORK, TO REPRESENT ME IN ANY MATTER NOW PENDING BEFORE THE DEPARTMENT OF WELFARE.

DATED: NEW YORK, NEW YORK May 1, 1967

Synester Bradley

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Patricia A. Smith
235 "K" Street, Southwest
Washington, D. C.

and

Dora M. Crowder
50 "O" Street, Northwest, Apartment 2
Washington, D. C.

individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

Civil Action
No. 1447-66

The Board of Commissioners of the District of Columbia; Walter N. Tobriner, individually and as President of the Board of Commissioners of the District of Columbia; John B. Duncan, Brig. Gen. C. M. Duke, individually and as members of the Board of Commissioners of the District of Columbia; Donald D. Brewer, individually and as Director of the Department of Public Welfare of the District of Columbia; Donald Gray, individually and as Chief of the Public Assistance Division, Department of Public Welfare of the District of Columbia; William R. Galvin, individually and as Chief of the Officer of Investigations and Collections, Department of Public Welfare of the District of Columbia; and Joseph Klugewicz, DANNA FOE individually and as ~~an~~ investigators employed by the Department of Public Welfare of the District of Columbia,

Defendants.

AMENDED COMPLAINT
(for declaratory judgment and injunctive relief)

1. This action is brought under 42 USC 1983 for declaratory judgment and injunctive relief to redress deprivation under color of District of Columbia laws statutes, ordinances, regulations, customs and usages of rights, privileges, and immunities secured by the First, Fourth, Fifth, Sixth and Ninth Amendments to the Constitution of the United States, and by 42 USC 601 et seq. Jurisdiction is conferred on this Court by Title 28, Sections 1343, 2201, and 2202 of the United States Code.

2. Plaintiffs Patricia A. Smith and Dora M. Crowder are adult citizens of the United States, residents of the District of Columbia, and are or were at all times herein relevant, mothers of needy children receiving assistance under the District of Columbia's Aid to Families with Dependant Children (hereinafter referred to as AFDC) program promulgated, administered, supervised, and executed by defendants, under color of laws, statutes, ordinances, regulations, customs and usages of or pertaining to the District of Columbia.

3. Plaintiffs are members of a class composed of District of Columbia resident mothers of needy children who are or were recipients of assistance under the AFDC program of the District of Columbia. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all persons constituting the above described class who are similarily situated. The persons in the class are so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims of the representative parties are typical of the claims of the class and the representative parties will fairly and adequately protect the interests of the class.

4. Defendants: (a) Defendant Board of Commissioners, pursuant to the provisions of D. C. Code 3-202 et seq. (Supp. V), is responsible for administering the District of Columbia Public Assistance Act of 1962, which authorizes the AFDC program, and establishing and enforcing rules and regulations to carry out these provisions. Defendants Walter N. Tobriner, John B. Duncan, and Brig. Gen. Charles M. Duke are members of and constitute the defendant Board of Commissioners.

(b) Defendant Donald D. Brewer is and was during all the times in question herein Director of the Department of Public Welfare of the District of Columbia, a governmental agency of the District of Columbia which has exclusive responsibility for the administration of AFDC and whose agents enforced the policies and engaged in the practices herein complained of. The Director of the Department of Public Welfare performs all the functions vested in the Board of Commissioners by the District of Columbia Public Assistance Act of 1962, except the adoption and promulgation of regulations (D. C. Code § 3-220 (Supp. V); D. C. Code, Title I, Appendix, Reorg. Ord. No. 140 (Supp. V).

(c) Defendant Donald Gray is and was during all the times in question herein Chief of the Public Assistance Division of the Department of Public Welfare, which Division has been delegated responsibility for determining initial and continuing eligibility of plaintiffs and all others similarly situated to receive AFDC benefits.

(d) Defendant William R. Galvin is and was during all the times in question herein the Chief of the Office of Investigations and Collections, which office is responsible for the supervision and conduct of the agents employed within his office who executed the policies and engaged in the practices herein complained of.

(e) Defendant Joseph Klugewicz is an investigator in the Office of Investigations and Collections, and personally executed the policies and engaged in the practices specifically complained of by plaintiff Patricia A. Smith.

5. The defendants have authorized, permitted and engaged in the following policies and practices, all of which deprive plaintiffs and those persons similarly situated of rights, privileges and immunities secured by the Constitution of the United States, to wit:

a. Gaining admittance to and conducting searches at the homes wherein AFDC welfare recipients reside without valid consent and without first having secured search warrants and properly informing the residents of their constitutional right to refuse entry, to refuse to answer questions, to be represented by counsel during interrogation and of the potential civil and criminal penalties resulting from entry and search.

b. Interrogating plaintiffs, AFDC recipients and others in their homes and elsewhere to obtain information to support criminal prosecutions and civil actions against plaintiffs, others similarly situated and friends, acquaintances and guests without valid consent and without first having secured search warrants and properly informing the residents of their constitutional right to refuse entry, to refuse to answer questions, to be represented by counsel during interrogation and of the potential civil and criminal penalties resulting from entry and search.

c. Conducting secret or harrassing surveilances of the homes, persons and private affairs of plaintiffs, others similarly situated, and their guests, friends and acquaintances.

d. Intimidating, coercing, and harrassing plaintiffs and others similarly situated by threatening to terminate, suspend or diminish AFDC payments, to remove the dependant AFDC children recipients from their homes and to bring civil and criminal actions against plaintiffs and others similarly situated.

6. Pursuant to the policies and practices described in the preceding paragraph, the residence of plaintiff Patricia A. Smith was first entered and searched by investigators employed by the Department of Public Welfare in 1961 and 1962. During the searches, in the early morning hours, investigators questioned plaintiff Smith about her sexual activities and examined rooms and closets without her consent.

7. Further investigations of the residence of plaintiff Patricia A. Smith were conducted by defendant Klugewicz and another investigator, Dana Froe, in January and March 1966. These searches of bedrooms and closets were done without the consent of plaintiff Smith. During one search, on January 16, 1966, a Sunday morning, investigator Froe, prior to entering plaintiff's apartment, listened for sounds inside the apartment by pressing his ear against a door. On another search on March 14, 1966, defendant Klugewicz and an unknown investigator conducted a surveilance of the apartment in a parked automobile outside the apartment. During a search of plaintiff Smith's apartment on January 25, 1966, defendant Klugewicz and another investigator interrogated the plaintiff and a male friend, Earl Walker, concerning their private lives.

8. Pursuant to the policies and practices described in paragraph 5., unknown investigators employed by the Department of Public Welfare conducted

searches and surveilances of the residence of plaintiff Dora M. Crowder in October and November 1964 without the consent of plaintiff Crowder. During these searches articles of men's clothing were found in the apartment occupied by plaintiff Crowder and, on one occasion, a male friend of plaintiff Crowder entered the apartment and was interrogated by the investigators. This same friend, Junious Oliver, was observed leaving the residence of plaintiff Crowder on November 19, 1964, in the early morning.

9. As a result of the investigations conducted by the defendants as described in the preceeding paragraph, the Department of Public Welfare ordered plaintiff Crowder to repay $750.00 of money received under the AFDC program as obtained in violation of the departmental regulation covering a "substitute parent." HPA 11 EL 4.5, IV, c. 1 and 2. This order was appealed by plaintiff Crowder and reversed in May 1966 by the Department.

10. Each of the entries and searches of the residences of the plaintiffs as described in paragraphs 6, 7 and 8 were made without valid consent and without search warrants and without properly informing plaintiffs of their constitutional right to refuse entry, to refuse to answer questions, to be represented by counsel during interrogation and of the potential civil and criminal penalties resulting from entry and search. The permission by plaintiffs to enter their residences was given because of fear that refusal would terminate AFDC payments or that other retaliatory action would be taken and was submission to authority rather than voluntary consent. This fear was and is based upon threats. and other intimidatory acts made or permitted by defendants against plaintiffs and others similarly situated.

11. Plaintiffs are informed and believe, and therefore aver, that the conduct of defendants perpetrated upon plaintiffs is in like manner perpetrated upon members constituting the class hereinbefore described, of which plaintiffs are members.

12. Defendants threaten to continue the conduct herein complained of, and plaintiffs suffer, and will continue to suffer, irreparable injury for which there is no adequate remedy at law, unless this Court declares the rights of plaintiffs and those similarly situated, and enjoins the unlawful conduct of defendants.

13. Plaintiffs Smith and Crowder and all others similarly situated have been, are now and will continue to be subjected to denial of rights secured to them by the Constitution of the United States because of the policies and practices of the defendants, in the following particulars:

(a) The right to freedom of association as guaranteed by the First Amendment

(b) The right to protection from unreasonable searches and seizures as guaranteed by the Fourth Amendment

(c) The right not to be compelled to give evidence against themselves as guaranteed by the Fifth Amendment

(d) The right to be free from oppressive, arbitrary and capricious governmental action as guaranteed by the Fifth Amendment

(e) The right to counsel as guaranteed by the Sixth Amendment

(f) The right to privacy and freedom from furtive and clandestine surveilance as guaranteed by the Fourth and Ninth Amendment

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray on behalf of themselves and those similarly situated that this Honorable Court:

1. Advance the cause on the docket, ordering a speedy hearing of this action according to law.

2. Enter a declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure that the administration, operation and execution by the defendants of the AFDC program of the District of Columbia is in violation of rights, privileges and immunities secured by the First, Fourth, Fifth, Sixth and Ninth Amendments of the Constitution of the United States to the plaintiff and the members of the class they represent, and further declaring that defendants, their agents and successors in office, and all persons acting in concert and participation with them, may not enter into the dwelling places of plaintiffs and others similarly situated or otherwise conduct investigations of the AFDC program:

(a) Without obtaining a valid search warrant issued upon probable cause, and properly informing plaintiffs and others similarly situated of their constitutional right to refuse entry to their residences, to refuse to answer questions, to be represented by counsel during any interrogation and of the potential civil and criminal penalties resulting from entry and search

(b) By terminating, suspending or in any way diminishing, or threatening to terminate, suspend or diminish, AFDC benefits because plaintiffs or others similarly situated refuse to permit entry to their homes or otherwise exercise their rights, privileges, and immunities under the Constitution and laws of the United States.

And for further relief, plaintiffs respectfully pray on behalf of themselves and all others similarly situated that this Honorable Court enter a permanent injunction restraining defendants, their agents, successors in office, and all persons acting in concert and participation with them:

1. From entering into the dwelling places of plaintiffs and others similarly situated, or otherwise conducting investigations:

(a) Without obtaining a valid search warrant issued upon probable cause, and properly informing plaintiffs and others similarly situated of their constitutional right to refuse entry to their residences, to refuse to answer questions, to be represented by counsel during any interrogation and of the potential civil and criminal penalties resulting from entry and search

(b) By terminating, suspending or in any way diminishing, or threatening to terminate, suspend or diminish, AFDC benefits because plaintiffs or others similarly situated refuse to permit entry to their homes or otherwise exercise their rights, privileges, and immunities under the Constitution and laws of the United States.

Plaintiffs further pray this Court allow costs herein and grant such other additional or alternative relief as may appear to be equitable and just.

David H. Marlin, Deputy Director, Law
Reform and Education, NLSP
416 5th Street, N.W.
Washington, D. C.

Francis A. Cunning, Attorney
Neighborhood Legal Services Project
1302 New Jersey Avenue, N.W.
Washington, D. C.

Frank D. Reeves
NAACP Legal Defense & Education Fund, Inc.
P.O. Box 1121, Howard University Law School
Washington, D. C.

Attorneys for Plaintiff

October 1966

VERIFICATION

District of Columbia, ss:

I, Patricia A. Smith, being first duly sworn, depose and say that I am one of the plaintiffs in the within action; that I have read the foregoing complaint and know the contents thereof; that the same is true to my knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

____
Patricia A. Smith

Subscribed and sworn to before me this____________ day of ______________, 1966.

____
Notary Public, D. C.

District of Columbia, ss:

I, Dora M. Crowder, being first duly sworn, depose and say that I am one of the plaintiffs in the within action; that I have read the foregoing complaint and know the contents thereof; that the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

____
Dora M. Crowder

Subscribed and sworn to before me this____________day of ____________, 1966.

____
Notary Public, D. C.

In the UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Synester Bradley
1492 Longfellow Avenue
Bronx, New York   individually and on behalf
                                   of all others similarly situated
vs.   Plaintiffs,

George K. Wyman, individually and as Commissioner of
The State of New York Department of Social Welfare;
Joseph H. Louchheim, individually and as Deputy Commissioner of the New York State Department of Social Welfare; Mitchell I. Ginsberg, individually and as
Commissioner of the Department of Social Services of the
City of New York;   , individually
and as   of the
Department of Social Services of the City of New York; and
Paul Hecht, individually and as Special Investigator for
                                              of the Department of Social Services of the City of New York,

Defendents.

COMPLAINT

(for declaratory judgment and injunctive relief)

1. This action is brought under 42 USC 1983 for declaratory judgment and injunctive relief to redress deprivation under color of New York State laws, statutes, ordinances, regulations, customs and usages of rights, priveleges and immunities secured by the First, Fourth, Fifth, Sixth and Ninth Amendments to the Constitution of the United States, and by 42 USC 601 et seq. Jurisdiction is conferred on this Court by Title 28, Sections 1343, 2201 and 2202 of the United States Code.

2. Plaintiff Synester Bradley is an adult citizen of the United States, residing in New York State, and is and was at all times herein relevant the mother of a needy child receiving assistance under New York State's program of Aid to Dependent Children (hereinafter referred to as ADC), a program promulgated, administered, supervised and executed by defendents under color of laws, statutes, ordinances, regulations, customs and usages of or pertaining to the State of New York.

3. Plaintiff is a member of a class composed of New York State residents who are or were recipients of public assistance under the ADC, Aid to the Disabled, Home Relief A~~ssistance~~, Veterans Assistance, ~~Aid~~ ASST. to the Blind, and ~~Aid to the Aged~~ Old Age Ass. programs of the State of New York. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and all persons constituting the above described class who are similarly situated. The persons in this class are so numerous that joinder of all mem-

(OVER)

bers is impracticable, there are questions of fact or law common to the class, ~~and~~ the representative party is typical of the ~~exi~~ claims of the class and the representative party will fairly and adequately protect the interests of the class.

4. Defendents: (a) Defendent George K. Wyman as Commissioner of the New York State Department of Social Welfare is by vrtue of the Social Welfare Law of New York State responsible for the is responsible for all conduct of that Department pursuant to Sections 34, 20 and 355 of the Social Welfare Law of New York State.

(b) Defendent Joseph H. Louchheim as Deputy Commissioner in Charge of New York City Affairs of the New York State Department of Social Welfare is upon information and belief responsible for all conduct of that Department within the City of New York.

(c) Defendent Mitchell I. Ginsberg as Commissioner of the Department of Social Services of the City of New York is upon information and belief responsible for all conduct of that Department.

(d) Defendent as of the Department of Social Services of the City of New York is responsible upon information and belief for the supervision and conduct of the agents employed within his , which agents executed the policies and engaged in the practices herein complained of.

(e) Defendent Paul Hecht is a Special Investigator in the of the Department of Social Services of the City of New York, and personally executed the policies and engaged in the practices specifically complained of by ~~x~~ plaintiff Synester Bradley.

5. The defendents have authorized, engaged in, and permitted the following policies and practices, all of which deprive plaintiff and those persons similarly situated of rights, priveleges and immunities secured by the Constitution of the United States, to wit:

a. Gaining addmitance to and conducting searches at the homes wherein recipients of public assistance reside without valid consent and without first having secured search warrants and properly informing the residents of their constitutional right to refuse entry, to refuse to answer questions, to be represented by counsel during interrogation and of the potential civil criminal penalties resulting from entry

b. Interrogating plaintiff, recipients of public assistance and others in their homes and elsewhere to obtain information to support criminal prosecutions and actions against plaintiff, others similarly situated and friends, acquaintances and guests without valid consent and without first having secured search warrants and properly informing the residents of their constitutional right to refuse entry, to refuse to answer questions, to be represented by counsel during interrogation and of the potential civil and criminal penalties resulting from entry, search and interrogation.

c. Conducting secret or harassing surveilances of the homes, persons, and private affairs of plaintiff, others similarly situated, and their guests, friends and acquaintances.

d. Intimidating, coercing and harassing plaintiff and others similarly situated by threatening to terminate, suspend or diminish public assistance payments, to remove the dependent ADC children recipients from their homes, and to bring civil and criminal actions against plaintiff, others similarly situated, and their friends, guests, and acquaintances.

6. Pursuant to the policies and practices described above in the preceding paragraph on Thursday april 27, 1967 a special investigator ~~from the~~, Paul Hecht, previously unknown to the plaintiff, came to the residence of Synester Bradley and threatened that, if he were not permitted to enter and search the premises, the plaintiff's public assistance would be terminated. Intimidated by this overt threat and by the implicit threat posed by the presence of a special investigator at her door in the early morning, the plaintiff allowed the defendent Paul Hecht to enter her apartment, whereupon he engaged in a protracted search of her home and personal effects without her consent. He then proceeded to interrogate her at length concerning her sexual activities, her personal life friends, guests and acquaintances and financial status. At all times during this search and interrogation, defendent Paul Hecht was in effective control of the plaintiff's home.

(OVER)

7. This entry and search of the residence of the plaintiff as desribed in paragraph 6 was made without valid consent and without a search warrant and without properly informing the plaintiff of her constitutional right to refuse entry, to refuse to allow a search, to refuse to answer questions, to be represented by counsel during interrogation and of the potential civil and criminal penalties resulting from entry and search, which, in the ordinary course, involve referral to the office of the District Attorney for prosecution. The permission by plaintiff to enter her residence was given because of fear that refusal would terminate her public assistance or that other retaliatory action would be taken and was submission to the power of authority rather than voluntary consent. This fear was and is based upon threats, accusations and other intimidatory acts made or permitted by defendents against plaintiff and others similarly situated.

8. Plaintiff is informed and believes, and therefore avers, that the conduct of defendents perpetrated upon plaintiff is in like manner perpetrated as as part of a course, pattern, custom and policy of action upon members of the class hereinbefore described, of which plaintiff is a member. (See the two letters hereto attached as exhibits A and B, the former being a letter of complaint to the defendents against the conduct perpetrated against the plaintiff by her counsel, the latter a reply from the defendents condoning such conduct and maintaining that it is part of a regular pattern of their activity.)

9. Plaintiff has attempted to exhaust her administrative remedies in this matter but has been prevented from doing so by defendents. (See the two letters hereto attached as exhibits C and D.) Defendents threaten to continue and are continuing the conduct herein complained of, and ~~pa~~ plaintiff and others similarly situated suffer, and will continue to suffer, irreparable injury for which there is no adequate remedy at law, unless this court declares the rights of plaintiff and those similarly situated, and enjoins the unlawful conduct of defendents.

10. Plaintiff Bradley and all others similarly situated have been, are now, and will continue to be subjected to denial of rights secured to them by the Constitution of the United States because of the policies ~~of~~ and practices of the defendents, in the following particulars:

(a) The right to freedom of association as guaranteed by the First Amendment

(b) The right to protection from unreasonable searches and seizures as guaranteed by the Fourth Amendment

(c) The right not to be compelled to give evidence against themselves as guaranteed by the Fifth Amendment

(d) The right to be free of the opressive, arbitrary and capricious governmental action as guaranteed by the Fifth Amendment

(e) The right to counsel as guarnteed by the Sixth Amendment

(f) The right to privacy and freedom from surveilance as guaranteed by the Fourth and Ninth Amendments

Prayer For Relief

WHEREFORE, Plaintiff respectfully prays on behalf of herself and all those similarly situated that this Honorable Court:

1. Advance the cause on the docket, ordering a speedy hearing of this action according to law.

2. Enter a declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure that the administration, operation and execution by the defendents of the public assistance programs of the State of New York are in violation of the rights, priveleges and immunities secured by the First, Fourth, Fifth, Sixth and Ninth Amendments to the Constitution of the United States to the plaintiff and the members of the class she represents, and further declaring that defendents, their agents and successors in office, and all persons acting in consert and participation with them, may not enter into the dwelling places of plaintiff and other similarly situated or otherwise conduct investigations of the public assistance programs of the state of New York:

(a) Without obtaining a valid search warrant issued upon probable cause, and properly informing plaintiff and others similarly situated of their constitutional right to refuse entry to their residences, to refuse to answer questions, to be represented by counsel during any interrogation and of the potential civil and criminal penalties resulting from entry and search

(b) By terminating, suspending or in any way diminishing, or threatening to terminate, suspend or diminish public assistance benefits because plaintiff or others similarly situated refuse to permit entry to their homes or otherwise exercise their rights, priveleges and immunities under the Constitution and laws of the United States.

And for further relief, plaintiff respectfully prays on behalf of herself and all others similarly situated that this Honorable Court enter a permanent injunction restraining defendents, their agents, successors in office, and all persons acting in concert and participation with them from entering into the dwelling places of plaintiff and others similarly situated, or otherwise conducting investigations:

1. Without obtaining a valid search warrant issued upon probable cause, and properly informing plaintiffs and all others similarly situated of their constitutional right to refuse entry to their residences, to refuse to answer questions, to be represented by counsel during any interrogation and of the potential civil and criminal penalties resulting from entry and search

2. By terminating, suspending or in any way diminishing, or threatening to terminate, suspend or diminish public assistance benefits because the plaintiff or others similarly situated refuse to permit entry to their homes or otherwise exercise their rights, priveleges and immunities under the Constitution and laws of the United States.

Plaintiff further prays that this Court allow costs herein and grant such other additional or alternative relief as may appear to be equitable and just.

SUPREME COURT OF THE STATE OF NEW YORK

I, Roberta Basketl, petitioner herein, respectfully allege:

1. I reside at ~~Sixteen~~ 16 Monroe Street, Mount Vernon, New York. I have been ~~s~~ a resident of New York for .
2. I am years old and have no means of support other than my own earnings,½and a Social Security check of monthly.
3. I live with and support seven children and two grandchildren.

4. I have been a regular client of the Welfare Center, One South First Avenue, Mount Vernon, New York, since . My case number is F-010395.

5. On the morning of Wednesday, July 5, 1967 I discovered that my changepurse was missing from my purse. It had contained all that was left of my regular Welfare allotment, a special grant allotted to me for a refrigerator, my Social Security allotment, a sum of money that the Welfare Department had refunded to me, and a sum of money belonging to the Welfare Department which I was waiting to return to said Department. This money, which was all in cash, was all I or my dependents had.

6. I notified the Welfare Department through my caseworker, Mr. Patnick of this loss and requested of him and of Mr. Stuart D. Rosenthal, his Unit Supervisor, that immediate emergency aid be given me and my dependents and that, with the exception of the money that had belonged to the Welfare Department, the Welfare Department replace the money that was missing. Both requests were refused.

7. I am petitioning this court for an order persuant to Article 78 of the Civil Practice Law and Rules directing the respondents to perform their duty under the law to replace the missing money and to grant*emergency assistance to me and my dependents until such replacement can be made.

* such adequate

8. Respondent George K. Wynan as Commissioner of the New York State Department of Social Welfare is by virtue of the Social Welfare Law responsible for the administrative conduct of that department and supervising its compliance with the law.(See Sections 34, 20, and 355 of the Social Welfare Law.)

9. Respondent Louis P. Kurtis, as Commissioner of the Westchester County Department of Public Welfare, is respondible for the administration of welfare in his district.

10. Respondent, Max Waldgeir, as Director of Area Five of the New York State Department of Social Welfare, is responsible for the activities of the State Department of Social Welfare within the said district which includes Mount Vernon and is ~~responsible for~~ and is in charge of the operating of the State Department of Social Welfare within Mount ~~Ma~~ Vernon.

11. The respondents are under a legal duty to allow me replacement of the missing funds and emergency assistance as requested. The basis of this legal duty, as explained to me by my attourney, is set forth below:

Basket 2

I seek to initiate this proceeding by order to show cause and petition rather than notice and petition because ~~and and~~ my dependents and I are in dire need of immediate public assistance.

No previous application for the same or similar relief has been made.

WHEREFORE, I respectfully and truely pray for an order of this court commanding the above named respondents to replace the missing funds and to allow my dependents and myself adequate emergency aid until such replacement is made,

June 6, 1967 • THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 35, No. 47

JUN 7 1967

OPINIONS ANNOUNCED JUNE 5, 1967

The Supreme Court decided:

FEDERAL COURTS AND PROCEDURE – Venue

Section 1391(b) of Judicial Code permits suit against multistate unincorporated association, like suit against corporation, in any district in which it does business. (Denver & R.G.W. R.R. Co. v. Railroad Trainmen, No. 704) . . . . page 4527

MOTOR CARRIERS – Control

Interstate Commerce Commission's duty, under Section 20a(2) of Interstate Commerce Act, to determine that proposed stock issuance by carrier is in "public interest" and for "lawful object" requires its consideration of change in control and anticompetitive consequences before approval; ICC did not abuse its discretion in approving Railway Express Agency's issuance of minority stock interest to Greyhound while deferring consideration of Section 5 "control" issue during 60-day period within which Greyhound has agreed to offer to purchase majority interest, since events negating possibility of Greyhound control may occur within 60-day period; Clayton Act prevents ICC from deferring consideration of "anticompetitive consequences." (Denver & R.G.W. R.R. Co. v. U.S., No. 305) . . . . page 4531

MUNICIPAL CORPORATIONS – Inspections

Fourth Amendment bars warrantless, nonemergency inspection of residential and commercial premises by city health or fire inspectors without occupant's consent; warrant for health or fire inspection of residential or commercial premises need not be based on reasonable cause to believe that violation exists in premises sought to be inspected, but can be based on reasonableness of need to conduct periodic, area-wide inspection. (Camara v. Municipal Court, No. 92; See v. Seattle, No. 180) . . . . pages 4517, 4522

PUBLIC UTILITIES – Federal Power Act

Section 7(b) of Federal Power Act requires Federal Power Commission to find that licensing of private, state, or municipal agency is satisfactory alternative to federal development of waterway before awarding license for construction of hydroelectric power project. (Udall v. FPC, Nos. 463 and 462) . . . . page 4551

TAXATION – Estate Tax Deductions

Federal courts and agencies are not bound, in federal estate tax controversy, by state trial court's adjudication of property rights, or characterization of property interests, in proceeding to which United States was not party. (Comr. v. Bosch Estate, Nos. 673 and 240) . . . . page 4542

Full Text of Opinions

No. 92.—October Term, 1966.

Roland Camara, Appellant, *v.* Municipal Court of the City and County of San Francisco.	On Appeal From the District Court of Appeal of California, First Appellate District.

[June 5, 1967.]

Mr. Justice White delivered the opinion of the Court.

In *Frank v. Maryland*, 359 U. S. 360, this Court upheld, by a five-to-four vote, a state court conviction of a homeowner who refused to permit a municipal health inspector to enter and inspect her premises without a search warrant. In *Ohio ex rel. Eaton v. Price*, 364 U. S. 263, a similar conviction was affirmed by an equally divided Court. Since those closely divided decisions, more intensive efforts at all levels of government to contain and eliminate urban blight have led to increasing use of such inspection techniques, while numerous decisions of this Court have more fully defined the Fourth Amendment's effect on state and municipal action. *E. g., Mapp v. Ohio*, 367 U. S. 643; *Ker v. California*, 374 U. S. 23. In view of the growing nationwide importance of the problem, we noted probable jurisdiction in this case and

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in See To re-examine whether admin. inspection programs as presently authorized + conducted, violate 4th A rights as those rights are enforced against the States through the Fourteenth Amendment. 385 U. S. 808.

Appellant brought this action in a California Superior Court alleging that he was awaiting trial on a criminal charge of violating the San Francisco Housing Code by refusing to permit a warrantless inspection of his residence, and that a writ of prohibition should issue to the criminal court because the ordinance authorizing such inspections is unconstitutional on its face. The Superior Court denied the writ, the District Court of Appeal affirmed, and the Supreme Court of California denied a petition for hearing. Appellant properly raised and had considered by the California courts the federal constitutional questions he now presents to this Court.

Though there were no judicial findings of fact in this prohibition proceeding, we shall set forth the parties' factual allegations. On November 6, 1963, an inspector of the Division of Housing Inspection of the San Francisco Department of Public Health entered an apartment building to make a routine annual inspection for possible violations of the city's Housing Code.[1] The building's manager informed the inspector that appellant, lessee of the ground floor, was using the rear of his leasehold as a personal residence. Claiming that the building's occupancy permit did not allow residental use of the ground floor, the inspector confronted appellant and demanded that he permit an inspection of the premises. Appellant refused to allow the inspection because the inspector lacked a search warrant.

The inspector returned on November 8, again without a warrant, and appellant again refused to allow an inspection. A citation was then mailed ordering appellant to appear at the district attorney's office. When appellant failed to appear, two inspectors returned to his apartment on November 22. They informed appellant that he was required by law to permit an inspection under § 503 of the Housing Code:

> "Sec. 503 RIGHT TO ENTER BUILDING. Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code."

Appellant nevertheless refused the inspectors access to his apartment without a search warrant. Thereafter, a

complaint was filed charging him with refusing to permit a lawful inspection in violation of § 507 of the Code.[2] Appellant was arrested on Dec 2 and released

on bail. When his demurrer to the criminal complaint was denied, appellant filed this petition for a writ of prohibition.

Appellant has argued throughout this litigation that § 503 is contrary to the Fourth and Fourteenth Amendments in that it authorizes municipal officials to enter a private dwelling without a search warrant and without probable cause to believe that a violation of the Housing Code exists therein. Consequently, appellant contends, he may not be prosecuted under § 507 for refusing to permit an inspection unconstitutionally authorized by § 503. Relying on *Frank* v. *Maryland*, *Eaton* v. *Price*, and decisions in other States,[3] the District Court of Appeal held that § 503 does not violate Fourth Amendment rights because it "is part of a regulatory scheme which is essentially civil rather than criminal in nature, inasmuch as that section creates a right of inspection which is limited in scope and may not be exercised under unreasonable conditions." Having concluded that *Frank* v. *Maryland*, to the extent that it sanctioned such warrantless inspections, must be overruled, we reverse.

I.

The Fourth Amendment provides that, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. The Fourth Amendment thus gives concrete expression to a right of the people which "is basic to a free society." *Wolf* v. *Colorado*, 338 U. S. 25, 27. As such, the Fourth Amendment is enforceable against

The states thru the 14th A
Ker v.

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[1] The inspection was conducted pursuant to § 86 (3) of the San Francisco Municipal Code, which provides that apartment house operators shall pay an annual license fee in part to defray the cost of periodic inspections of their buildings. The inspections are to be made by the Bureau of Housing Inspection "at least once a year and as often thereafter as may be deemed necessary." The permit of occupancy, which prescribes the apartment units which a building may contain, is not issued until the license is obtained.

[2] "SEC. 507 PENALTY FOR VIOLATION. Any person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue."

[3] *Givner* v. *State*, 210 Md. 484, 124 A. 2d 764 (1956); [illegible] *St. Louis* v. *Evans*, 337 S. W. 2d 948 (Mo. 1960); [illegible] *Eaton* v. *Price*, 168 Ohio St. 123, 151 N. E. 2d 523 (1958), aff'd by an equally divided Court, 364 U. S. 263 (1960). See also *State* v. *Rees*, 139 N. W. 2d 406 (Iowa 1966); *Commonwealth* v. [illegible], 1966 Mass. Adv. Sheets 1359, 222 N. E. 2d 681 (1966), [illegible] docketed Jan. 5, 1967, No. 1179 Misc., O. T. 1966; [illegible] v. *LaVerne*, 14 N. Y. 2d 304, 200 N. E. 2d 441 (1964).

California, 374 U. S. 23, 30.

Though there has been general agreement as to the fundamental purpose of the Fourth Amendment, translation of the abstract prohibition against "unreasonable searches and seizures" into workable guidelines for the decision of particular cases is a difficult task which has for many years divided the members of this Court. Nevertheless, one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant. See, *e. g., Stoner* v. *California*, 376 U. S. 483; *United States* v. *Jeffers*, 342 U. S. 48; *McDonald* v. *United States*, 335 U. S. 451; *Agnello* v. *United States*, 269 U. S. 20. As the Court explained in *Johnson* v. *United States*, 333 U. S. 10, 14:

> "The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent."

In *Frank* v. *Maryland*, this Court upheld the conviction of one who refused to permit a warrantless inspection of private premises for the purposes of locating and abating a suspected public nuisance. Although *Frank* can arguably be distinguished from these cases on its facts,[4] the *Frank* opinion has generally been interpreted as carving out an additional exception to the rule that warrantless searches are unreasonable under the Fourth Amendment. See *Eaton* v. *Price*, *supra*. The District Court of Appeal so interpreted *Frank* in this case, and that ruling is the core of appellant's challenge here. We proceed to a re-examination of the factors which persuaded the *Frank* majority to adopt this construction of the Fourth Amendment's prohibition against unreasonable searches.

To the *Frank* majority, municipal fire, health, and housing inspection programs "touch at most upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusions," 359 U. S., at 367, because the inspections are merely to determine whether physical conditions exist which do not comply with minimum standards prescribed in local regulatory ordinances. Since the inspector does not ask that the property owner open his doors to a search for "evidence of criminal action" which may be used to secure the owner's criminal conviction, historic interests of "self-protection" jointly protected by the Fourth and Fifth Amendments[5] are said not to be involved, but only the less intense "right to be secure from intrusion into personal privacy." *Id.*, at 365.

We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. For this reason alone *Frank* differed from the great bulk of Fourth Amendment cases which have been considered by this Court. But we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior.[6] For instance, even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security. And even accepting Frank's rather remarkable premise, inspections of the kind we are here considering do in fact jeopardize "self protection" interests of the property owner. Like most regulatory laws, fire, health, and housing codes are enforced by criminal processes. In some cities, discovery of a violation by the inspector leads to a criminal complaint.[7] Even in cities where discovery of a violation produces only an administrative compliance order,[8] refusal to comply is a criminal offense, and the fact of compliance is verified by a second inspection, again without a warrant.[9] Finally, as this case demonstrates, refusal to permit an inspection is itself a crime, punishable by fine or even by jail sentence.

The *Frank* majority suggested, and appellee reasserts, two other justifications for permitting administrative health and safety inspections without a warrant. First, it is argued that these inspections are "designed to make the least possible demand on the individual occupant." 359 U. S., at 367. The ordinances authorizing inspections are hedged with safeguards, and at any rate the inspector's particular decision to enter must comply with the constitutional standard of reasonableness even if he may enter without a warrant.[10] In addition, the argument

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[4] In *Frank*, the Baltimore ordinance required that the health inspector "have cause to suspect that a nuisance exists in any house, cellar or enclosure" before he could demand entry without a warrant, a requirement obviously met in *Frank* because the inspector observed extreme structural decay and a pile of rodent feces on the appellant's premises. Section 503 of the San Francisco Housing Code has no such "cause" requirement, but neither did the Ohio ordinance at issue in *Eaton* v. *Price*, a case which four Justices thought was controlled by *Frank*. 364 U. S., at 264, 265, n. 2 (opinion of Mr. Justice Brennan).

[5] See *Boyd* v. *United States*, 116 U. S. 616. Compare *Schmerber* v. *California*, 384 U. S. 757, 766-772.

[6] See *Abel* v. *United States*, 362 U. S. 217, 254-256 (Mr. Justice Brennan, dissenting); *District of Columbia* v. *Little*, 85 U. S. App. D. C. 242, 178 F. 2d 13 (C. A. D. C. Cir.), aff'd, 339 U. S. 1.

[7] See New York, N. Y., Administrative Code § D26-8.0 (1964).

[8] See Washington, D. C., Housing Regulations § 2104 (19[illegible]).

[9] This is the more prevalent enforcement procedure. See Note, Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, 813-816.

[10] The San Francisco Code requires that the inspector display proper credentials, that he inspect "at reasonable times," and that

not ask that the property owner
open his doors to a search

Secondly, the warrant process could not function effectively in this field. The decision to inspect an entire municipal area is based upon legislative or administrative assessment of broad factors such as the area's age and condition. Unless the magistrate is to review such policy matters, he must issue a "rubber stamp" warrant which provides no protection at all to the property owner.

In our opinion, these arguments unduly discount the purposes behind the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed by a neutral magistrate without any reassessment of the basic agency decision to canvass an area. Yet, only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk, as appellant did here, he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search. See cases cited, p. 5, *supra*. We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty.

The final justification suggested for warrantless administrative searches is that the public interest demands such a rule: it is vigorously argued that the health and safety of entire urban populations is dependent upon enforcement of minimum fire, housing, and sanitation standards, and that the only effective means of enforcing such codes is by routine systematized inspection of all physical structures. Of course, in applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration. But we think this argument misses the mark. The question is not, at this stage at least, whether these inspections may be made, but whether they may be made without a warrant. For example, to say that gambling raids may not be made at the discretion of the police without a warrant is not necessarily to say that gambling raids may never be made. In assessing whether the public interest demands creation of a general exception to the Fourth Amendment's warrant requirement, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. See *Schmerber* v. *California*, 384 U. S. 757, 770-771. It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive.

In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual, and that the reasons put forth in *Frank* v. *Maryland* and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the Fourth Amendment's protections. Because of the nature of the municipal programs under consideration, however, these conclusions must be the beginning, not the end of our inquiry. The *Frank* majority gave recognition to the unique character of these inspection programs by refusing to require search warrants; to reject that disposition does not justify ignoring the question whether some other accommodation between public need and individual rights is essential.

II

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause." Borrowing from more typical Fourth Amendment cases, appellant argues not only that code enforcement inspection programs must be circumscribed by a warrant procedure, but also that warrants should issue only when the inspector possesses probable cause to believe that a particular dwelling contains violations of the minimum standards prescribed by the code being enforced. We disagree.

In cases in which the Fourth Amendment requires that a warrant to search be obtained, "probable cause" is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness. To apply this standard, it is obviously necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen. For example, in a criminal investigation, the police may undertake to recover specific stolen or contraband goods. But that public interest would hardly justify a sweeping search of an entire city conducted in the hope that these goods might be found. Consequently, a search for these goods, even with a warrant, is "reasonable" only when there is "probable cause" to believe that they will be uncovered in a particular dwelling.

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obtain entry by force, at least when there is an emergency. The Baltimore ordinance in *Frank* v. *Maryland* required that the inspector "have cause to suspect that a nuisance exists." Some cities notify residents in advance, by mail or posted notice, of impending area inspections. State courts upholding these inspections without warrant have imposed a general reasonableness requirement. See cases cited, note 3, *supra*.

Here "probable cause" a general matter
in welfare individual.

Unlike the search pursuant to a criminal investigation, the inspection programs at issue here are aimed at securing city-wide compliance with minimum physical standards for private property. The primary governmental interest at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety. Because fires and epidemics may ravage large urban areas, because unsightly conditions adversely affect the economic values of neighboring structures, numerous courts have upheld the police power of municipalities to impose and enforce such minimum standards even upon existing structures.[10] In determining whether a particular inspection is reasonable—and thus in determining whether there is probable cause to issue a warrant for that inspection—the need for the inspection must be weighed in terms of these reasonable goals of code enforcement.

There is unanimous agreement among those most familiar with this field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures.[11] It is here that the probable cause debate is focused, for the agency's decision to conduct an area inspection is unavoidably based on its appraisal of conditions in the area as a whole, not on its knowledge of conditions in each particular building. Appellee contends that, if the probable cause standard urged by appellant is adopted, the area inspection will be eliminated as a means of seeking compliance with code standards and the reasonable goals of code enforcement will be dealt a crushing blow.

In meeting this contention, appellant argues first, that his probable cause standard would not jeopardize area inspection programs because only a minute portion of the population will refuse to consent to such inspections, and second, that individual privacy in any event should be given preference to the public interest in conducting such inspections. The first argument, even if true, is irrelevant to the question whether the area inspection is reasonable within the meaning of the Fourth Amendment. The second argument is in effect an assertion that the area inspection is an unreasonable search. Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails. But we think that a number of persuasive factors combine to support the reasonableness of code enforcement area inspections. First, such programs have a long history of judicial and public acceptance. See *Frank* v. *Maryland*, 359 U. S., at 367-371. Second, the public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions—faulty wiring is an obvious example—are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself. Finally, because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy. Both the majority and the dissent in *Frank* emphatically supported this conclusion:

> "Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area by area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts. The need for preventive action is great, and city after city has seen this need and granted the power of inspection to its health officials; and these inspections are apparently welcomed by all but an insignificant few. Certainly, the nature of our society has not vitiated the need for inspections first thought necessary 158 years ago, nor has experience revealed any abuse or inroad on freedom in meeting this need by means that history and dominant public opinion have sanctioned." 359 U. S., at 372.
>
> "... This is not to suggest that a health official need show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime. Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken. Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained. The passage of a certain period without inspection might of itself be sufficient in a given situation to justify the issuance of a warrant. The test of 'probable cause' required by the Fourth Amendment can take into account the nature of the search that is

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[10] See *Abbate Bros.* v. *City of Chicago*, 11 Ill. 2d 337, 142 N. E. 2d 691; *City of Louisville* v. *Thompson*, 339 S. W. 2d 869 (Ky.); *Adamec* v. *Post*, 273 N. Y. 250, 7 N. E. 2d 120; *Paquette* v. *City of Fall River*, 338 Mass. 368, 155 N. E. 2d 775; *Richards* v. *City of Columbia*, 227 S. C. 538, 88 S. E. 2d 683; *Boden* v. *City of Milwaukee*, 8 Wis. 2d 318, 99 N. W. 2d 156.

[11] See Osgood & Zwerner, Rehabilitation and Conservation, 25 Law & Contemp. Prob. 705, 718 and n. 43; Schwartz, Crucial Areas in Administrative Law, 34 Geo. Wash. L. Rev. 401, 423 and n. 93; [illegible] and the Improvement of Substandard [illegible] Calif. L. Rev. [illegible]; Note, Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, 807, 851; Note, Municipal Housing Codes, 69 Harv. L. Rev. 1115, 1124-1125. See [illegible] the Housing and Urban Development Act of 1965, [illegible] U. S. C. § 1468 [illegible] with [illegible] grant [illegible] for the purpose [illegible] of concentrated code enforcement [illegible] deteriorating areas in which such [illegible] together with those public improvements to be provided [illegible] may be expected to arrest the decline of the [illegible]

sought. 372 U.S., at 383 (Mr. Justice Douglas, dissenting).

Having concluded that the area inspection is a "reasonable" search of private property within the meaning of the Fourth Amendment, it is obvious that "probable cause" to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling. It has been suggested that so to vary the probable cause test from the standard applied in criminal cases would be to authorize a "synthetic search warrant" and thereby to lessen the overall protections of the Fourth Amendment. Frank v. Maryland, 359 U.S., at 373. But we do not agree. The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant. [illegible]

III

[illegible]

the requirement of a warrant procedure does not suggest any change in what seems to be the prevailing local policy, in most situations, of authorizing entry, but not entry by force, to inspect.

IV

In this case, appellant has been charged with a crime for his refusal to permit housing inspectors to enter his leasehold without a warrant. There was no emergency demanding immediate access; in fact, the inspectors made three trips to the building in an attempt to obtain appellant's consent to search. Yet no warrant was obtained and thus appellant was unable to verify either the need for or the appropriate limits of the inspection. No doubt, the inspectors entered the public portion of the building with the consent of the landlord, through the building's manager, but appellee does not contend that such consent was sufficient to authorize inspection of appellant's premises. Cf. Stoner v. California, 376 U.S. 483; Chapman v. United States, 365 U.S. 610; McDonald v. United States, 335 U.S. 451. Assuming the facts to be as the parties have alleged, we therefore conclude that appellant had a constitutional right to insist that the inspectors obtain a warrant to search and that appellant may not constitutionally be convicted for refusing to consent to the inspection. It appears from the opinion of the District [illegible]

BRADLEY v. WYMAN ET AL.

COMPULSION OF ENTRANCE TO INVADE PRIVATE HOMES AND INTRUDE IN PRIVATE AFFAIRS COMPRISES AN UNCONSTITUTIONAL AND ILLEGAL ACT

Welfare clients are first class citizens. When an agent of the welfare department applies pressure to a welfare client and suceeds in obtaining entrance to the recipient's private home and in interrogating the recipient about personal matters, there are two main areas of constitutional rights that are violated. The first is the right to privacy and security in ~~a private~~ ONE'S home. The second is the right not to be compelled to accept visits by unwanted guests and not to be intruded upon, particularly when constitutional rights are infringed.

In particular, we will demonstrate:

A. That there is a consitutional right to privacy which has been and continues to be violated by the policies and practices of Defendants;

B. That the searches conducted by the Defendants are among the unreasonable searches specifically condemned by the Fourth Amendment, unless conducted with search warrants or valid consent;

C. That Defendants do not obtain search warrants for the searches they conduct and that the "consent" obtained from plaintiff and members of her class is inherently coercive and in violation of the constitutional commands; and

D. That such coercive searches and investigations are repugnant to the purposes and requirements of the Social Security Act as well as the Constitution.

1. THE CONSITUTION GUARANTEES A RIGHT TO SECURITY IN A PERSON'S HOME, PRIVACY ABOUT PERSONAL MATTERS, AND A GENERAL PERSONAL PRIVACY, PARTICULARLY APPROPRIATE IN THE CASE OF A WELFARE CLIENT

> The poorest man may in his cottage bid defiance to all the forces of the Crown ... the King of England cannot enter -- all his force dares not cross the threshold of the ruined tenement.

So spoke William Pitt discussing the right of a citizen when an agent sought entrance for enforcement of an excise tax on cider. This spirit underlies the Fourth Amendment, as is evidenced by the approving quotation in Miller v. U.S., 357 U.S. 301, at 307 (1958). Plaintiff contends that her poor home and the tenements of other recipients of public assistance are as important to them as that cottage was to that man and that the Fourth Amendment "marks the right to privacy as one of the unique values of our civilization." McDonald v. U.S., 335 U.S.

451, at 453 (1948).

The right to privacy, however, exceeds the bounds of the Fourth Amendment. In Griswold v. Connecticut, 381 U.S. 479 (1965), the ancient and honorable principles underlying the right to privacy were once again reaffirmed as having continued vigor, major importance and complete contemporary application. Said the Court (381 U.S. at 484):

> The principles laid down by this opinion ... affect the very essence of constitutional liberty and security. (T)hey apply to all invasions on the part of the government and its employees of the sanctity of a man's home and privacies of life. It is not the breaking of his doors, and the rummaging of his drawers that constitutes the essence of the offense, but it is the invasion of his indefeasible right of personal security...

quoting Boyd v. U.S., 116 U.S. 616 at 630 (1886).

~~The right to privacy, however,~~

Griswold held that there was an unconstitutional invasion of privacy when doctors were prohibited from advising and assisting people in personal birth control plans. Among other things, the Court found that "(t)he very idea" of searching a marital bedroom - even with a search warrant - "is repulsive to the notions of privacy surrounding the marital relationship" (381 U.S. at 495-6). The decision was based on the notion that a range of rights to privacy were implicit or "pemumbral" throughout a number of amendments to the Constitution, specifically referring to the Ninth Amendment which reserves all rights not explicitly delegated to the government to the people. The importance of Griswold is certain; concerning personal matters of privacy, governmental action will be severely scrutinized.

Historically, the right to privacy has had one of its clearest manifestations in a person's right to security in his home, with the concomitant right not to be bothered by others, no matter what their motives or justifications. In Monroe v. Pape, 365 U.S. 167, 170 (1961) the Supreme Court held that an invasion of a home, a search and ensuing arrest by police officers constituted a deprivation of the rights, priveleges and immunities secured by the Constitution; a tort action would therefore lie. Thus, the right to privacy in one's home is a clear right under the Constitution. This right is so important, moreover, that at times it has seemed almost to counterbalance the right of free speech. Compare Breard v. Alexandria, 341 U.S. 622 (1951), with Martin v. Struthers, 319 U.S. 141 (1943), involving decisions as to whether the right not to be pestered by peddlers was

was more important than the freedom to disseminate literature. The lesson of these cases is that the home is a private realm, that invasion of its privacy is illegal, and that such invasion is not likely to be justified. See also McDonald v, U.S., 335 U.S. at 455; Johnson v. U.S., 333 U.S. 10 at 14 (1948).

Under the Constitution, the invasion of the citizen's "right of personal security" (Griswold, supra at 484) must meet, at the very least, two major tests. First, governmental control over and intrusion into constitutionally protected areas must always be based on a compelling state interest. This is not merely "a rational relationship to some colorable state interest ... (but) only the gravest abuses endangering paramount interest give occasion for permissible limitation." Thomas v. Collins, 323 U.S. 516; Sherbert v. Verner, 374 U.S. 398, at 406 (1963). State governments have been prohibited from forcing students to "accept public instruction only". Pierce v. Society of Sisters, 268 U.S. 510, at 535 (1928). So too, state governments have been prohibited from preventing the instruction of German in high school, Meyer v. Nebraska, 262 U.S. 390 (1926), or forcing flag salutes, West Virginia v. Barnette, 319 U.S. 640 (1943). The courts have found themselves cast into severe doubt and turmoil even when the lack of state intrusion would mean death for the person intruded upon. E.g., Application of President and Directors of Georgetown University, 331 F.2d 1010 (1964) Second, even if the governmental purpose is legitimate and is substantial enough to meet the above stated test, that purpose

> may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. (Griswold v. Connecticut, supra, at 485, citing NAACP v. Alabama, 377 U.S. 288, 307. See also Keyishan xx et al.x v. Board, U.S. , 35 LW 4152, 4153 (Jan., 1967).)

The practices of the Defendants do not meet either of these above tests. The Defendants can invoke no compelling state interest which ~~warrants~~ JUSTIFIES their invasion of recipients' homes and their violation of the last reserve of the recipients' privacy. Insofar as welfare officials need to force entry into recipients' homes in order to investigate alleged welfare "fraud", they can effectively compel entry by the one time-honored and constitutionally acceptable means.

If probable cause exists to believe that a welfare recipient is committing fraud, a search warrant can be obtained. If such probable cause does not exist, there can be no ground for compelled entry into the home. As the Supreme Court declared in Chapman v. U.S., 365 U.S. 610, 615 (1961):

> When the right of privacy must~~xyieldxyield~~ yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or governmental enforcement official.

Any policy or practice which permits invasion of the homes of welfare recipients without judicial authorization or without conformity with the other requirements of the Fourth Amendment violates not only the Fourth Amendment, but the broader and even more ancient right of privacy. Requirements that welfare recipients - in the sanctity of their own homes - submit themselves to questions concerning their personal and sexual behavior constitute interrogation surely far too broad for whatever legitimate eligibility criteria for welfare that may be shown to exist.

Both Defendants' coerced entry into recipients' homes and their wide-ranging interrogations once in the homes are unconstitutional. Our constitutional framework, the history of the right to be secure in the home, the recent pronoucements by the Supreme Court about the extent and meaning of privacy, all demonstrate that one of the rights of the people not taken away from them by the government but reinforced to the people by constitutional amendments, is that of the right to security in a home, security from invasion, and security from surveillance -- all precious and central in American democracy. The cases which deal with privacy either directly or tangentially always establish an area of sanctity protected from scrutiny or invasion - an area of security in one's home and one's personal relationships. This area of protection may not be limited simply because the individual concerned is a recipient of welfare.

2. THE UNINVITED SEARCH BY A WELFARE INVESTIGATOR LOOKING FOR LAW VIOLATIONS AT A TIME AND IN A MANNER OF HIS CHOOSING VIOLATES THE FOURTH AMENDMENT

As noted by the Supreme Court, "Until Agnello v. United States, 269 U.S. 20, 46 S.Ct. 44, 70 L.Ed. 145 (1925), this Court had never directly decided, but had always assumed X 'that one's house cannot be lawfully searched without a search warrant, except as an incident to a lawful arrest therein.'" Chapman v. U.S., supra, at 613. Agnello, however, did explicitly decide that (269 U.S. at 32)

> The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws.

This presumption of unreasonableness has been recently reaffirmed by the Supreme Court in Camara v. Municipal Court of the City and County of San Francisco, 35 U.S.L.W. 4517 (U.S. June 5, 1967) and See v. City of Seattle, 35 U.S.L.W. 4522 (U.S. June 5, 1967). In the latter case, the Court said (35 U.S.L.W. at 4523)

> As we explained in Camara, a search of private houses is presumptively unreasonable if conducted without a warrant.

Thus, the prohibition against searches is couched broadly. It extends to many people, and has been applied to many people with more interest in the premises than that which may be asserted by a welfare department. In Chapman v. United States, supra, the Court in reasoning to the illegality of entry and search and seizure concluded that a landlord has no right, in the absence of an express covenant, to forcefully enter demised premises to view waste. Clearly, the landlord's interest in his property is a more direct one than a caseworker's interest in a client's conduct. Similarly, in United States v. Jeffers, 342 U.S. 48 (1951), the use of an assistant manager to enter a hotel room was found to fall athwart the Fourth Amendment's restrictions. Yet a hotel manager's interest in the conduct of guests and conditions of rooms is certainly more direct than a caseworker's interest in a client's conduct.

Nor can a continuing government program justify a search when entry is obtained on the grounds of government interest and not consent. Amos v. United States, 255 U.S. 313 (1921), found coercion by deputy collectors for the Internal Revenue Service the illegal element of a search when they came to search the premises, saying that they were looking for "violations of the revenue law." (255 U.S. at

315.) If internal revenue collectors may not search for crimes, general investigators are obviously forbidden from pursuing interests even more remote. See also Gouled v. U.S., 255 U.S. 298 (1921), banning searches carried out under the pretense of a friendly call which was a device to obtain evidence; such pretense is not unheard of in welfare search situations.'

Neither property interest nor personal relationship nor statement of interest in violation of laws can justify an entry or search of a home without a valid consent. Only a judicially authorized search warrant can so legitimate a search (and such warrants are not obtained -- nor even sought -- in welfare searches.) Such has been the position of the Court in numerous cases beyond those already cited. E.g., Taylor v. U.S. 286 U.S. 1 (1932); Johnson v. U.S., 333 U.S. 10 (1948).

The one significant exception to the constitutional requirement of search warrants had been thought to have been set forth in Frank v. Maryland, 359 U.S. 360 (1959). In Frank, the Court upheld searches carried out without warrants under a city ordinance authorizing health inspectors to inspect homes for unsanitary conditions. This decision was grounded on three factors; that due regard was had for convenience of time and place to the inhabitant, that the inspection was for remedial health purposes and not for criminal prosecution or forfeiture, and, lastly, that the paramount reason for the inspection was the maintainance of community health. None of these three factors is true of welfare searches.

Moreover, even the narrow exception permitted by the Frank decision is no longer allowed, that case having been over-ruled specifically by the recent case of Camara v, Municipal Court, supra. The Camara case concerned a defendent who had been charged with a crime for his refusal to permit housing inspectors to enter his leasehold without a warrant. The Supreme Court felt called upon (35 U.S.L.W. at 4518)

> to re-examine whether administrative inspection programs as as presently authorized and conducted violate Fourth Amendment rights as those rights are enforced against the states by the Fourteenth Amendment.

The Court concluded (35 U.S.L.W. at 4520)

> that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual....

The Court's conclusion was based on the reasoning that (35 U.S.L.W. at 4519)

> we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral". It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only ~~xkemxthe~~when the individual is suspected of criminal behavior.

In the companion case to Camara, See v. City of Seattle, supra, the Court further concluded on the basis of the former case that (35 U.S.L.W. at 4524)

> administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure.

It would seem clear that a welfare recipient has at least as great an interest in the privacy and security of his home as does a business-man at his estblishment; indeed, when it is considered that a welfare search may cost the welfare recipient the termination of the sole means of support of himself and his family or may lead to criminal action against him, his interests under the Fourth Amendment cannot be considered ~~"peripheral"xx~~ "peripheral". Clearly, with such danger, the Fourth and Fifth Amendments extend into welfare situations where the searches are for evidence that may predicate criminal prosecution. This fact alone condemns the searches. As recently noted by the Supreme Court:

> (T)here can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which ~~thaxx~~ their freedom of action is curtailed from being compelled to incriminate themselves.

Miranda v. Arizona, U.S. , 86 S. Ct. 1602, 1624 (1966).

Thus, no basis whatsoever exists for concluding that welfare searches may be conducted without a judicially authorized search warrant. Rather all the cases compel one conclusion: either welfare departments must seek and obtain search warrants for their searches, which they admittedly do not, or welfare departments must obtain valid consent for their searches. As we next demonstrate, such valid consent is also not obtained.

3. The Constitution Commands That No One Be Compelled to Forfeit His Constitutional Rights to Privacy in His Home and That, In Particular, Entry of Investigators into Welfare Recipients' Homes Through Express or Implied Threat of Suspension of Benefits Is Illegal and Unconstitutional

When a welfare investigator appears at the door and expresses his desire to enter the threat of termination, suspension or reduction of benefits hangs over the head of the welfare recipient like the Sword of Damocles. Recipients suffer from absolute poverty and virtually total social rejection, which in large measure flows from their condition as well as their racial and ethnic identity. With no savings, no property, no financial reserves, no relatives upon whom they can rely, generally uneducated, untrained and with little work experience, welfare assistance is for them a matter of life and death. If removed from the public assistance rolls, their capacity to maintain home and family is minimal, perhaps non-existant. Dependence of such persons on public assistance is, therefore, absolute.

In effect, therefore, a condition of servitude prevails, notwithstanding the educated and enlightened efforts of some social workers. The welfare department controls the recipient's one means of support, and it repeatedly informs him, both verbally and in writing, that he must cooperate with the welfare department, must submit to investigations of his home, or in consequence he will lose welfare benefits. There is little doubt that the recipient is aware that a good relationship with the welfare department and its investigators will help resolve any doubts about his eligibility, help him qualify for additional disbursements, and allow, on occasion, for special grants in the recipient's favor. Thus, maintaining the good will of the welfare worker is the paramount concern of the recipient and his passport to continued survival.

Not only is the recipient suffering the inadequacies that the law has long recognized, i.e. , ignorance, poverty and all the consequences of being disadvantaged, but in addition he is suffering the severe limitation of an on-going relationship with the welfare department. In such a context, we contend that a valid consensual relationship cannot exist. The law has long recognized that a consensual relationship is predicated upon a parity between the parties; the law of fiduciaries imposes restraints on the trustee; the law of contracts imposes restraints on the adult in relation to a minor; the criminal law imposes a statutory bar on consent of sexual relations with an underaged minor. The law is replete with situations in which absence of equality based on age, condition or relationships affects "consent".

The very appearance and entrance of a welfare investigator is an implicit threat to the recipient; fear enters before he does. Yet, there is no question that a threat to cut off welfare benefits is a coercive threat for the purpose of gaining entrance. Lynumn v. Illinois, 372 U.S. 528, 534 (1963), held that there was coercion and no consent when policemen threatened to take away welfare benefits in order to gain entry for the purpose of searching a home. The unanimous Court found such a threat vitiated any consent to entry and search.

That welfare investigators use such threats (whether explicitly or implicitly) may be seen from the facts of this case and may be inferred from the circumstances of their entry and their failure to inform recipients of their right to refuse entry without thereby affecting their welfare grants. No one doubts that welfare inspectors are not welcomed into the homes they scrutinize. Compare Neusin v. District of Columbia, 115 F. 2d 690, 694 (D.C. Cir. 1940), where the Court noted that the ignorence of the extent and meaning of the Fourth Amendment's right to privacy and security in one's own home was a factor to be weighed in evaluating voluntariness of permitting entry. The Court concluded that there was no waiver. Welfare clients are unlikely to know the extent of their Fourth Amendment rights against those who determine whether they deserve subsistance or not. Their fear could never constitute a waiver. See in general, Herter v. U.S. , 27 F. 2d 521 (1928) and citations for a careful examination of what any invitation to enter might mean.

The threat of deprivation of means of living is as illegal and unconstitutional as it is repugnant. See Keyishian v. Board, U.S. , , 35 U.S.L.W. 4152, 4156 (January 23, 1967) and Yick Wo v. Hopkins, 118 U.S. 356 (1886). In the words of Justice Holmes, speaking for a unanimous court in Union Pacific Railroad Company v. Public Service Commission, 248 U.S. 67 at 70 (1918):

> It is the characteristic of duress properly so called ... (to compel) a choice... according to interest... to choose the lesser of two evils.

For a welfare client, the fear of termination of any support may make the surrender of a constitutional right (no matter how deeply desired) the choosing of a lesser evil.

The recent decisions of the Supreme Court, Garrity v. New Jersey, U.S. , 87 S. Ct. 616, 618 (1967) and Spevack v. Klein, U.S. , 87 S.Ct. 625 , 17 L.Ed. 2d 574 (1967), thoroughly reject such compelled choices between "the rock and the whirlpool." We believe those cases very clearly define the necessary conclusion on the issue here of "consent".

In both Spevack and Garrity the Court emphasized that there was coercion unless the choice to waive the constitutional right (against self-incrimination) was made "in the unfettered exercise of his own will." In Garrity the Court specifically rejected the applicability of the well-known statement (that there is a constitutional right to talk politics but no constitutional right to be a policeman) to a situation where a policeman's job was conditioned upon abandoning his right against self-incrimination so that threat of discharge could be used to obtain incriminating evidence. 35 U.S.L.W. at 4137. If the subject of the state action had "to suffer" a "penalty" for choosing silence, compulsion exists. The Court in Spevack went on to note (87 S.Ct. at 628):

> In this context "penalty" is not restricted to fine or imprisonment. It means, as we said in Griffin v. California, 380 U.S. 605, the imposition of any sanction which makes assertion of the Fifth Amendment privilege costly.

*and both privileges are involved here.

Coercion with regard to the Fifth Amendment privilege is not different from coercion with regard to the Fourth Amendment* The technique used in welfare searches is that of first - gaining entry, second - searching, third - interrogating.xWhile it may be said that an applicant for welfare agrees to give certain informatipn about herslef as a condition of aid (primarily her income, the composition of her family, her residence), it cannot be said she "waives" her right not to answer any question about any aspect of her sexual or personal life - particularly in her own home in the early morning. (It might be added that the additional twist to the welfare search and interrogation technique is to force the recipient to implore any friend who is in her home also to answer whatever questions are asked so as not to endanger her welfare grant.)

The case law has long held that, with regard to the Fourth (as with the Fifth) Amendment rights, waiver or consent must be proved by clear and positive testimony, and that there must be no duress or coercion. Amos v. U.S., supra. The government must show a consent that is "unequivocal and specific" (Karwicki v. U.S., 55 F.2d 222, 226 (4th Cir.)) and "freely and intelligently given" (Kovach v. U.S., 53 F. 2d 639, 6th Cir. 1931). In general, see Judd v.xU.S., 190 F. 2d 649 (D.C. Cir., 1951) on coercing consent to enter. See also Nelson v. U.S., 208 F. 2d 505, (D.C. Cir. 1953), cert. denied, 74 S. Ct. 40 (1953). For the strong presumption against waiver of constitutional rights, see Johnson v. Zerbst,304 U.S. 458 (1938), and Carnley v. Cochran, 369 U.S. 506 (1962).

Welfare claimants faced with demanding investigators fear for their very lives. Under the Constitution, entry so obtained is quite clearly obtained by unconstitutional coercion and is therefore as illegal as it is repugnant.

Fed Civ Procedure 2734

Hullom v. Kent, 262 F2d 862

In f.p. not include right to copies of court orders w.o. payment,

Weller v. Dickson, 314 F2d 598

Allowing In f.p. is within discretion of court & to be allowed only in exceptional cases for civil damage, statutory Privilege not a right.

Perkins v. Cingliano 296 F2d. 567

Cost of transcript recoverable by U.S.

U.S. ex rel Gardner v. Madden, 352 F2d 792

Discretion of Dist Ct

198 F Supp 615 229 F Supp 19

Euler v. Waller 295 F 2d 765

Schauffler v. United Association of Journeymen, Etc,

Extra. 246 F 2d 867 (3rd Cir 1957)

Costs ≠ Expenses incurred by party in investigation, preparation & & presentation taxed against Δ in civil contempt,

869 citing Sprague v. Ticonic Bank, 307 US 161, 166 59 S. Ct. 777, 780 (1939)

"Traditionally..." the historic practice of granting reimbursement for the costs of litigation rather than the conventional taxable costs is part of the original authority of the chancellor to do equity in a particular

Sprague

P prosecuted suit at own expense & sought
164 to recover extra costs – "counsel fees & other
779 expenses entailed by the litigation, ~~Ct below said~~
not included in the ordinary taxable costs
recognized by statute."

"Allowance of such costs in appropriate situations is part of the historic equity jurisdiction of the federal courts.

NEW YORK TIMES, SUNDAY, AUGUST 20, 1967

SEMINAR GUIDES NEGRO OFFICIALS

School Board Aides in South Beset by Inexperience

By M. S. HANDLER

Special to The New York Times

WARRENTON, Va., Aug. 19—"I am elected. What do I do now?"

In response to this plea, which characterizes the attitude of many newly elected Negro members of Southern school boards, the Scholarship, Education and Defense Fund for Racial Equality is conducting a four-day seminar at Airlie House, near Warrenton, to instruct about 35 new school board members in planning school policies, in, preparing school budgets and in public administration.

The Negro school board members come from Arkansas, Louisiana, Mississippi, Texas, Georgia, Alabama, Virginia, Florida, and Washington, D. C. Their educational qualifications range from grammar school to college graduates. None of them has had any experience in public office.

The group is part of the first wave of Negroes elected to local offices in the South this year. They now are finding that they are facing their new responsibilities without sufficient experience and knowledge.

Officials of the United States Office of Education and from school systems in New York, Pittsburgh, Washington and New Jersey have been giving the participants intensive survey courses.

Organized 5 Years Ago

Dr. Aaron Brown, professor of Education at Long Island University and a member of the New York City Board of Education, is one of the instructors at the seminar. Dr. Brown has provided the school board members with a background paper explaining to them the history and development of school boards in the United States.

The Scholarship, Education and Defense Fund for Racial Equality was founded in September, 1962, by former members of the Congress of Racial Equality and their supporters, who felt that the time had come to shift from slogans and speechmaking to preparing Negroes to assume responsible roles in their communities.

Disheartened by a lack of concrete programs to train Negroes to participate in American society, the founders of the fund began to move out of CORE shortly before James Farmer was replaced by Floyd McKissick as executive director.

Marvin Rich, the 37-year-old white former fundraiser and director of public relations under Mr. Farmer, helped organize the fund and is presently its executive director. Ronnie Moore, 26, who led CORE programs in Louisiana, is the fund's program and training director. Mr. Moore left CORE when Mr. McKissick took over.

Mr. Moore is regarded as a brilliant young Negro analyst of social and political movements in Negro communities. He travels extensively throughout the South and Southwest contacting local community leaders and organizing seminars to train for leadership.

At the request of local community leaders, the fund has organized seminars on voter registration, the techniques of organizing Negro communities to win local elections, how to deal with white officials on the basis of equality, and how to organize trade unions.

Mr. Rich and Mr. Moore said that the current seminar at Airlie House was in recognition of the fact that the problems facing Negroes become more acute after they have won election to public office for which they have had no experience.

The fund has sponsored between 50 and 60 seminars on various aspects of these problems in the past 18 months. The site of the present seminar, Airlie House, is a conference center on a 1,200-acre estate 45 miles from Washington.

Function of Fund

Mr. Rich and Mr. Moore said that the function of the fund is to spread political education among local Negro community leaders, guide them on the complexities of public administration, and provide techniques for dealing with any obstructionist tactics by white officials.

The two men said that the fund has no affiliation with any civil rights or action group.

The foundations contributing to the fund's budget include the Samuel Rubin Foundation, the Shanti Foundation, the Stern Family Fund, the Aaron E. Norman Fund, the Field Foundation, the New Hope Foundation, the Wechsler-Forrest Slater Foundation, the Albert List Foundation, the Robert Marshall Civil Liberties Trust, and the William C. Whitney Foundation.

THE NEW YORK TIMES, MONDAY, AUGUST 21, 1967

Negroes, at Seminar, Discover Obstacles to School Changes

By M. S. HANDLER

Special to The New York Times

WARRENTON, Va., Aug. 20—Thirty-five Negroes, members of Southern school boards and candidates for election to other school boards, listened intently as a high official of the Department of Health, Education and Welfare explained why it is so difficult for the Federal Government to prevent the construction of new schools in Negro slums that help perpetuate segregation of the races.

The Federal official, a Negro, was addressing participants at a seminar sponsored by the Scholarship, Education and Defense Fund for Racial Equality. He conceded, under persistent but courteous questioning, that there was little that the Government could do under existing legislation.

It was then that a tall, gray-haired, distinguished looking Negro school principal from the South, who is also a candidate for his local school board, said with quiet desperation:

"I now understand for the first time the meaning of 'burn, baby, burn'."

A Disheartened Feeling

The school board members and candidate members returned today to their homes in Arkansas, Louisiana, Mississippi, Texas, Georgia, Alabama, Virginia, Florida, and Washington, D.C., better informed about educational policy planning and public administration. However, they admitted that they were disillusioned about the possibilities of bringing about quick changes in their communities.

The participants attended the seminar at the Airlie House conference center in the lush hunting country of Warrenton to learn ways to become effective on their jobs.

The agenda at the seminar included such complicated subjects as the history and development of school boards in the United States; problems facing Southern school boards; responsibilities of Negro school boards; Federal programs of assistance and program planning and budgeting systems for local school districts; financial management; teaching programs and teacher evaluation.

Tell of Frustrations

As minority members of their school boards, the participants recounted their frustrations in dealing with growing de facto school segregation, the lack of adequate textbooks and other supplies for Negro schools, the equalization of salaries for Negro and white teachers, an improvement in teaching and in curriculums, better teaching training, and opposition of school officials working in cooperation with the white school-board majorities.

Many of the participants appeared to share the view that integration is still the key to better education for Negro pupils, although privately some thought that quality education in Negro schools rather than the establishment of integrated schools might provide a better solution.

The fund was founded by members of the Congress on Racial Equality who left the organization as the regime of James Farmer came to an end and Floyd McKissick became executive director. Its aim, according to Marvin Rich, the executive director, is to train Negroes for leadership in their communities.

W-2 (Rev. 1/10/51)-1500M-725046(66) 114

HISTORY SHEET

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

CASE NAME	ADDRESS	BASIC CASE NUMBER
BRADLEY, SYNESTER	1492 Longfellow Avenue, Bronx	ADC 2446654
		PAGE NO. 1

This case came to our attention through a letter of complaint submitted to the Commissioner's Office which states as follows:

COMPLAINT

March 9, 1967

Case Supervisor
Department of Welfare

RE: Mrs. Synester Moore
Bradley
1400 Block of Longfellow
Ave.

As a tax paying citizen, I would like to know how the above named person could be receiving AFDC when: 1) she is employed, 2) she has her child in West Virginia most of the time, 3) she receives support from her husband's family, and 4) she has a color telephone in her kitchen and one in the bedroom, her telephone number is 542-7486.

While I do feel the welfare assitance is a good and necessary thing, I do not fel it should be taken advantage of. I could understand the necissity of Mrs. Bradley's receiving DW Assistance while she was pregnant and while she took care of her child, however, I cannot understand the need for or why DW feels she needs assistance presently.

CC:
Welfare Commissioner

CASE SUMMARY

This case first came to our attention on 10/6/65 when the client who was four months pregnant and deserted by her legal husband applied for assistance. The client stated that her husband is an excessive drinker and has been very abusive to her. She states that she has in her possession an order of protection as he has threatened her with a knife. The client was so frightened by her husband that she refused to go home fearing he might be waiting for her.

The client's background indicates that she is a high school graduate from West Virginia where her mother still lives. She has a good wrk recor and had worked until she became pregnant. She had worked for RCA, Chock Full o' Nuts, etc. Her social security number is 235-66-7617. The client also had a court order against her husband for $15 weekly payable directly to DW. We rehoused the client and accepted the case and on 1/24/66, the client brought in a newspaper clipping indicating that her husband was arrested for vehicular homicide, driving while drunk, no license and a stolen car. The client showed industriousness, for while receiving p.a., she advised us that on her own she had started studying stenography at night school.

In a home visit of 9/8/66 the caseworker noticed the infant child was not at home and the client stated that a friend had taken the child to the clinic. On 11/16/66, we learned that the client had been elected Chairma of the Bronx Welfare Action Committee and was extremely active in relatio to the Department of Welfare.

WITH

From this point on, the client began making demands on the Dept. some of which were justifiable, others which we raised serious doubts about, However we find the majority of these were acceded by all the representatives of the Dept. and we wonder what value this is. The caseworker in early January made several visits to the client's home and did not find her in and when contacted by the client, the client advised the worker of the procedure he should use in visiting her and just when. The client stated she is not available for interview during the major part of the day as she is busy in her office, however, there seems to be no indication where this office is or verification of whether the client spends this much time there

The welfare center questioned the client on her possession of the telephon and the client summarily dismissed the matter stating that she required one as Chairman of her committee and refused to divulge under what circumstances this phone was paid for. The client further showed recent purchas of furniture, the payment of which could not be accounted for and she blatantly told the welfare center that she purchased this furniture on tim and makes payments for same but refused to give any other information.

On another occasion the client came in with utility arrears and we issued duplication for same in the face of the knowledge that client was paying for an unauthroized telephone, etc. We seriously question what service we give to a client when we are intimidated by her position and stretch regulations and sense of propriety beyond reasonable proportions.

HOME VISIT

4/25/67, 4/26/67 We visited client's building on both dates and did no find her at home as late as 4 P.M.

COLLATERAL VISIT

4/27/67 We visited client's building at 9 A.M. and were admit to the building by the landlord, who advised us tht he knows the client and that she lives alone. We asked about the child and he stated that when he rented the apartment to he thought there was a child but he has not seen the child for some time

COLLATERAL VISIT

4/27/67 We visited a neighbor who knew the client stating sh was a very nice woman and also stated that she has on occasion seen her with a child but not frequently. has not seen her with a child with her now since she believes before chi

HOME VISIT

4/27/67 We attempted to visit the client, who was home at th time. She refused to admit us stating that we were not her regular caseworker, that if we wished to se we should write to her and ask her to contact us for an appointment. explained to the client that we were from the DW, Central Office and th it is not always feasible to wait until a client has the time to see us. Nonetheless, she refused to admit us.

We slipped our identification under the door asking her to review it, which she did and she stated that she was aware that we were from the of Welfare, however, she refused to see us, uless we first wrote her a letter designating what time she could contact us so that she could de when she could be seen.

We advised the client that she could either admit us now or she could come to our office to see us to inquire why her p.a. check was stopped as we advised her that if a duly authorized representative of the Department could not visit her, we would have to suspend assistance until such time as the matter was clarified. The client reflected on this and then decided to admit us.

Client occupies a very nicely furnished and excellently kept three room apartment and it is our opinion that the amount of furnishings and appliances and brick-abrack reflect income in the home beyond the p.a. allowance. We found a telephone in the apartment as reported in the case record and an extension in the bedroom.

Upon our entering the apartment we noticed a bottle of Harvey's Bristol Cream and two glasses on the cocktail table. The client noticed our observing this and stated that she had just had a friend in and entertained her with a drink. We wish to make it very clear that this is not to insinuate that the client impresses us as being a drinker or an escapist of any degree. Our impression was that nothing fresh had been poured into these glasses since probably the previous day or night.

The living room had the baby's crib in it, however, the crib was stripped. There were no signs of diapers or other paraphernalia associated with the constant care of a child. The bedroom contained a double bed and our impression was such that it indicated it had been recently occupied by two adults. The client sensed our observation and immediately covered the bed. The client stated to us that if we thought there was a man in the house, we were grossly mistaken as she is not interested in men. She stated since the experience with her husband, she has had absolutely nothing to do with any man. We wish to point out that this response was unsolicited. We did mention however, to the client that she had an inordinate amount of perfume and toilet waters on her bathroom shelf, totaling approximately 35 various bottles. We admired her concern in the light of a woman who describes herself as not at all interested in men. The client then stated to us, if we are suspicious of her we could check wherever we wish and to open her medicine chest and said you are going to see shaving equipment but it is strictly for my use. We did observe two razors, shaving cream, etc.

We attempted to point out to the client that our interest in her case does not primarily center about any possible romantic involvement, and she being extremely defensive stated that we should discuss this matter with her, giving up the impression that she was daring us to discuss the matter with her. We attempted to get off the subject as it was our impression that though the client may have some romantic involvement, it did not appear to be a permanent one as there was truly no signs of another person residing in the apartment and collateral visits had failed to mention the presence of a man in the home. It was difficult to move the client from this subject and we did mention to her that there appeared to be other items of a delicate nature which did indicate that she possibly did have romantic interests, however, we formally ended the subject as it appeared the client was employing it as a wedge toward argumentation.

We next directed the interview to the question of where the client's child was at the moment. Client stated that a friend of hers had taken Lawrence to the clinic early this morning. We wish to point out that it was approximately 9:15 A.M. and there was a heavy rain storm outside. We asked the client what was the reason for the child going to the clinic and she stated to get shots. We wondered at her sending the child out in this weather and she simply shrugged this off. We asked her if she had the clinic card and she stated that she had naturally sent the card with her friend. We asked the client what clinic the child had been taken to and she stated the Bronx Lebanon Clinic, 173rd Street and Grand Concourse. We then summarized for the client that we could expect that there would be a record of the child's attendance. At this point, the client blanched and stated that as a matter of fact she is not sure which clinic the friend took her child to. We asked her what other possible clinics there might be and she stated she did not know as her friend had even mentioned that she was going to take the child to her own clinic and client did not know which one this was. We then asked client when she expected them to return and she stated at about 12 noon. We advised her that we were prepared to return or stay which ever she wished, so that we could witness the child's return. The client became very aggreived at this and began to recite dictates of what she believed our conduct should be in this matter which was that we should take her word for everything and leave immediately.

We were not prepared to accept her word at the moment, but if she wanted us to leave, we would of course respect her wishes. We of course pointed out to her that until the matter of the child being actually in the home was resolved, we would have to question her eligibility to receive assistance. We pointed out to the client that except for the fact that there was a crib in the home, whose mattress was not covered, we saw no other indication of an infant present. We asked the client if she had any baby food in the house and she stated she did and we asked asked her if we could see it and she refused to do so. We then summarized for the client that she appears to be an excellent housekeeper and we for one would doubt that if the child was in the home, the crib would be so naked, we would expect to see diapers hanging as was much of her own wash, we were unable to see baby food, etc. etc. We then suggested to the client that since she holds such a position of importance in the community, she of course would want this matter clarified as soon as possible and that perhaps a frank discussion in this matter would be best.

The client then stated that she had left her child with a friend over night. She stated the friend's name was Florence Johnson who lives in the same building, Apt. 3D. We then advised the client that of course this would be verified if we visited the friend. At this point, the client stated that we are harassing her and we pointed out to the client that asking legitimate questions when there was reasonable doubt is not considered harassing and we asked her to put herself in our position and what would she do. She stated that she would just take the client's word for it and we advised her that we have been taking her word all along, however, we now have reason to believe that the matter should be verified.

1400M-726209(63) 114

RY SHEET

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

ASE NAME	ADDRESS	BASIC CASE NUMBER
BRADLEY, SYNESTER	1492 Longfellow Avenue, Bronx	ADC 2446654 PAGE NO. 5

Finally the client blurted out that "my child is in West Virginia, and what about it". We asked her where the child was in West Virginia and she stated, he is with her mother-in-law, Elizabeth Smith at 316 Main Street, Mt. Hope, W.Va. We asked her how long the child was with the mother-in-law and she stated what does this matter. We pointed out to her that she had been continuously receiving a grant for the child and that the primary eligibility for her receiving assistance and service was as an ADC mother and that she in fact has not been fulfilling this function. We asked her if she did not consider it irregular to be receiving money for the support of a child while the child was not in the home. She stated that she sends money to her mother-in-law for the child. We asked her how she does this and she stated with money orders, and we asked her why money orders and she stated because it was a safe procedure. We then asked her if she had any money order stubs and she stated that she threw them all away. We pointed out to her she uses money orders as a safe procedure but throws the stubs away which would leave her without a claim for this money should it be lost. We asked her what kind of money orders she uses and she stated postal money orders. We asked her what post office she uses and she could not give us a location for a post office. We asked her what amounts of money she sends and she stated $10 per week. We asked her what the cost of the money order is and she thought awhile and then stated $1 and we told her that this was incorrect and we then asked her to kindly be more frank in her discussion with us as obviously she is not in the practice of sending money orders to her mother-in-law. She refused to comment on this. We asked her how long the child had been in West Virginia and she stated since about Christmas.

We then asked the client where she spends all her time and at this point she stated to us that she cannot stand our harassment and therefore, she is going to go out and get a job. We advised the client that under the circumstances of her being an unattached woman and that with her background and appearance, we felt that she would do very well in the labor market and we invited her to use our services in assisting her in getting a job. She stated that she believed that she can get a job. today She stated that she believes she can get a job paying $40 per week for three days work. We asked her if she would still like our assistance in getting a better than $40 per week job and she stated she would think about it. We asked her why she was so certain she was going to be able to get this job and she stated that of course she could not be sure. We asked her to call us that afternoon to let us know the results of this job effort. She stated that she would. She asked us if she could still receive the May 1 check and we advised her that of course she could, as there is no guarantee that she would have employment to meet her needs. We advised her that of course we would expect her to reimburse the allowance that she received for the child. She stated she would.

TELEPHONE CONTACT

4/27/67 Within two hours, the client called our office to advise that she is starting on employment that very day for St. Augustine's Church, 1659 Prospect Avenue at a rate of $40 per week, three days per week, Monday, Wednesday and Friday.

P. P. HECHT:mb SPECIAL UNIT BPA
D. 4/28/67
T. 5/1/67

400M-726209(65) 114

SHEET

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

NAME	ADDRESS	BASIC CASE NUMBER
BRADLEY		PAGE NO. 6

COLLATERAL CONTACT

5/2/67 We contacted Mrs. Terry, bookkeeper at St. Augustine's Church at 1659 Prospect Avenue who advised us that the client had been employed by the church since 4/1/67, at a weekly salary of $40. We asked Mrs. Terry if she had any knowledge of previous employment of the client and she stated she did not.

TELEPHONE CONTACT

5/3/67 The client called us on marginal date and stated that she has decided not to enlist our services in securing more meaningful employment for her. The client then advised us that we had committed an irregularity and began to recite chapter number and paragraph number of procedure in that we were not her caseworker and had intruded in her home and asked her questions which we had no right to ask, etc. She stated that she was going to make a formal complaint to the Commissioner of Welfare. We attempted to correct the client as her misrepresentation of procedure and she refused to hear any of this. She then asked us what was going to be the resolution on her case and we advised her that with the child out of the home, her present income would cover the needs and she would receive no further assistance from us. The client then recited verse, chapter and paragraph of procedure stating that she was entitled to the first $85 of income and a working mother's allowance. We wish at this point to record our impressions.

While the client has a high school diploma, we seriously question her degree of intelligence considering perhaps a shade below average. We are curious of her ability to read procedure and fully comprehend same. Nonetheless, we responded to her interpretation of these procedures stating that she was not a working mother since she was not caring for her child. She disagreed stating that the procedure does not specify that the child has to be in the home and furthermore, she is sending money to the child. We pointed out to the client that there is no authorization with the New York State Department of Welfare to support a resident of another state. The client bluntly told us that we did not know what we were talking about and seriously questioned if we were really acting in behalf of the Dept. of Welfare and frankly stated it was her opinion that we were being instructed to harass her because of who she was. She did not elaborate on this.

We summarized for the client that she is currently employed and that without a child in the home her income is sufficient to meet her needs and that in the present situation, she no longer qualified for assistance. The client then stated that if that was the situation she would immediatel return her child so that she might collect welfare. We attempted to point out to the client that this appeared to be a matter of cutting ones nose off to spite ones face, for apparently she had decided and accepted that it would be a superior relationship for her mother-in-law to care for the child while she went about attempting to construct her life for herself a we frankly told her that the impression she leaves us with is that she is more interested with a fight than a protective plan towards her own welfare. We advised her of course she was free to bring her child back and even cease employment to care for the child, however, if the only reason she was doing this was to continue on truly what is a unilateral fight, we felt this was a foolish effort.

We advised the client that if she reflected in a cooler moment, she might realize that her time and energies could be better and more practically used than to attempt victories over what she fancies ~~what~~ is an ogre. We pointed out to the client that she may be possessed with many hostilities because of various incidents in her life but it truly would be a waste of her time and her youth to attempt to gain some satisfaction by continuously being involved in a fight. The client refused to accept these suggestions and stated that she wants this issue brought to a head. We asked the client just what did she mean by this and she stated she wants a hearing because she insists she is entitled to employment and the support of her child in West Virginia. She further insisted that she wishes to make public our visit to her home which she considers illegal and the questions we asked her and the harassment we subjected her to. We again attempted to summarize for the client that she is misusing her energies and time and she interpreted this suggestion as our being afraid of her and frightened that we had done wrong and we assured her that we had not even considered anything of this nature and we implored her to get off of this note and let us concentrate on her ability to get a better job. She refused to do so and stated that she wants this matter thoroughly resolved. We advised her of course that we considered her position vulnerable as she had accepted welfare funds for support of a child which she was not entitled to and which she concealed.

We did not at this point tell her that we were aware that she also had been employed while in receipt of p.a. Client asked us what we intended to do about this and we advised her we would of course report it though we doubted that our Legal Section would require anything more than her confession of judgement. The client stated that she has already retained counsel and she intends to prefer charges against the undersigned and the Department of Welfare. It was apparent that we were making no progress with the client and we terminated the interview.

Later that afternoon our office was contacted by a David Gilman, Attorney for the client.

TELEPHONE CONTACT

5/4/67 We called the number left by Attorney Gilman and discovered this was Legal Aid Society and we then spoke with Mr. Gilman. Mr. Gilman was non-committal so far as any information was concerned admitting only that he represented the client, but he did attempt to get information from us and we advised him that we were not the proper person to discuss this matter with him and that since the case has taken the tone and turn that it has, we are refering it to our legal section and he may then speak with them.

RECOMMENDATION

We are returning this case to the welfare center with the following notations and recommendations.

Our review of this case substantiated that the client is employed and does have her child living in W. Virginia. We are submitting a refund summary for those monies received for the child since 12/16/66 and we are submitting a refund summary for all monies received from 4/1 through 5/15/67. We are recommending immediate closing of this case. This case may not be reopened without prior approval of BPA.

P.P. HECHT:mb BPA SPECIAL UNIT
D. 5/4/67

REV. 5/9/51

CITY OF NEW YORK
DEPARTMENT OF WELFARE

REFUND SUMMARY

DATE: May 4, 1967

TO: RESOURCE DIVISION, C.O.

FROM: W.C. BPA - Administration (WC 47)

1. CASE NAME BRADLEY, SYNESTER

ALIAS OR OTHER SPELLING

2. CASELOAD NO. 48-2 CASE NO. ADC 2446654

PREVIOUS CASE NO. *(if any)*

3. MUTUAL CASE NO.

IF V.A. AFFILIATION NO.

4. ADDRESS - *Present* 1492 Longfellow Avenue, Bronx

- *Previous*

5. FAMILY COMPOSITION *(List given names and birth dates)*

Synester	2/19/42
Lawrence	3/20/66

RECORD OF PUBLIC ASSISTANCE

	DATE		DATE	DATES OF CONCEALMENT				BUDGET DEFICITS DURING PERIODS OF CONCEALMENT
ACCEPTED	10/65	CLOSED	5/16/67	FROM	12/16/66	TO	5/15/67	$86.90 s/m
ACCEPTED		CLOSED		FROM		TO		
ACCEPTED		CLOSED		FROM		TO		
ACCEPTED		CLOSED		FROM		TO		

7. ESTIMATED TOTAL CONCEALMENT $ 386.70

8. DETAILS OF CONCEALMENT *(If more space is required, use reverse side)*

Client receiving ADC for child whild child was in West Virginia., from 12/16/66 to present. Also, client employed from 4/1/67 to present. Probably had other employment previously.

EMPLOYMENT *(State where employed during period of concealment; also current employer, if any)*

PERSON EMPLOYED	NAME AND ADDRESS OF EMPLOYER	PERIODS OF EMPLOYMENT	WEEKLY EARNINGS	SOC. SEC. NOS.	HOW DISCOVERED
SYNESTER	St. Augustine Church 1659 Prospect Avenue Bronx, New York	4/1/67 to present	$40		investigation

10. HEALTH CONDITION

good

(SEE OVER)

25 (REVERSE)
v. 5/9/51

11. REMARKS: *(Give details concerning resources previously concealed by family, or indicate present resources, and any other information which should be considered by the Resource Division in determining action to be taken.)*

Client has retained attroney, David Gilman of Legal Aid Society, EN 9-1500. Client as well as her attorney are unaware we know of her employment during April.

5-5-67

Signature of Investigator | *Date*

Signature of Unit Supervisor | *Date*

Rachel H. Rauch | 5/5/67

Signature of Case Supervisor | *Date*

Signature of Resource Consultant | *Date*

Form M-3h
Rev. 10/5/59

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
W.C. TREMONT
Address 1918 Arthur Ave.

NOTICE OF DISCONTINUANCE OF PUBLIC ASSISTANCE

Mrs. Sylvester Bradley
1492 Longfellow Ave.
Bronx, N.Y. 10460

ADC 2446654
Case Number

Fold

Fold

Our investigation shows that effective immediately you are not eligible to receive

AID TO DEPENDENT CHILDREN

for the following reasons:

We have been informed by BPA that Lawrence has been out of the home since Christmas and that you have been employed since 4/1/67, earning $40.00 per week, which is sufficient to cover your needs.

Senior Case
Supervisor
~~Mr.~~ Miss ~~Roach~~ Falcham –
Special
Investigation
250 Church
BPA –

You may wish to review the pamphlet which was given to you at the time of your application. It explains the provisions under which this type of public assistance is granted and your rights with respect to review of this decision.

J. T. Wynne
Unit Supervisor

5/10/67
Date

48-2
Caseload No.

AVISO DE SUSPENSION DE AYUDA

Nuestra investigación revela que efectivo inmediatamente y por las razones que, aquí se exponen que Ud. no es elegible para recibir el tipo de asistencia arriba mencionado.

El folleto que se le proporcionó cuando hizo su solicitud explica las condiciones que se requieren para conceder esta clase de ayuda y los derechos que a Ud. le asisten en lo que respecta al reexamen de esta decisión.

Sylvester Bradley
illegal search
Paul Hecht fr/250 Church
injunctive - own
class
Complaint + Memorandum
In
allege w/out warrent or
consent - went thru rooms
+ personal effects
not regular caseworker
refused to open door - Wel
but check would be cut off
refused fair hearing

Parrish case
Sea
Camara v

1 dinner	$1.00
10 subway fares to library	$2.00
sugar + tea	$1.05
10 Photo-copies -	$1.00

Longfellow Ave.

complaint of man in house
medicine

protracted search of house
inter. about sex personal life
monetary et al

letter of complaint by Gilman
response - conduct entirely proper
condoned by local

annexed hereto as exhibit
A + B

asked fair hearing - refusal
as C + D

Spec Invest
for Cumming's
Office
after incident
next check cut off
opened

~~Ed~~ J. Garrity et al v State of N. J.
35 USLW 4135 (Jan 17 '67)

Spevack v Klein
35 USLW 4140 (Jan, '67)

Keyishian et al v The Board
of Regents of the University of
the State of New Y.
35 USLW 4152 Jan 23 '67

546

BRISTOW, ROSA VS. FAIR HOUSING ASSOCIATES et.al. NEW YORK 1968-1969
(HOUSING DISCRIMINATION)

Box
Folder

State Historical Society of Wisconsin

Please Retain Original Order

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
HUMAN RIGHTS REVIEW BOARD
The Governor Alfred E. Smith
State Office Building (temporary address)
Albany, New York 12225

ROSA BRISTOW,
Complainant-Appellant

Vs.

FAIR HOUSING ASSOCIATES,
MILTON, DAVID, AND BERNARD ARRONSON,
PARTNERS, OWNERS OF PREMISES AT
15 and 16 JAMES STREET,
OSSINING, NEW YORK,
Respondents

NOTICE OF HEARING

Case No. CH-16872-68

Appeal No. 39

PLEASE TAKE NOTICE that the appeal in the above entitled case will be heard by the Human Rights Review Board before a panel of four members who have been duly designated by the Chairman, as follows:

Lloyd L. Hurst, Presiding
Carmel Carrington Marr
Albert S. Pacetta
Irma Vidal Santaella.

Such hearing will be held on March 27, 1969, at 2:30 P.M., at 270 Broadway, New York, New York, 25th floor, Room No. 2527.

Briefs may be filed by the parties, with the Presiding member or the panel, on or before that date. Four copies of such briefs must be so filed and copies should be forwarded to all parties to the proceeding.

If oral argument with respect to such appeal isdesired by any party, notice thereof must be given to the Presiding member on or before March 24, 1969. (Lloyd L. Hurst, Esq., c/o 65 Broad Street, Room 606, Rochester, New York 14614)

Dated: March 4, 1969 By J. Edward Conway

J. Edward Conway, Chairman

TO:

Mrs. Rosa Bristow
Senator Hotel
Lexington Avenue
White Plains, New York

cc: Mrs. Sid Trommer
Urban League of Westchester, Inc.
2 Grand Street
White Plains, New York

Fair Housing Associates
c/o Mr. Milton Aronson
A & B Stationery
36 West 33rd Street
New York, New York

TO:

Mrs. Edison Kirinus
15 James Street
Ossining, New York

Commissioner Robert J. Mangum
N.Y.S. Division of Human Rights
270 Broadway
New York, New York 10007

Henry Spitz, Esq.
N.Y.S. Division of Human Rights
270 Broadway
New York, New York 10007

STATE OF NEW YORK
EXECUTIVE DEPARTMENT : HUMAN RIGHTS REVIEW BOARD

ORDER PERMITTING WITHDRAWAL OF APPEAL

Case No. CH-16872-68

Appeal No. 39

ROSA BRISTOW,
Complainant-Appellant

Vs.

FAIR HOUSING ASSOCIATES,
MILTON, DAVID, AND BERNARD ARRONSON,
PARTNERS, OWNERS OF PREMISES AT
15 and 16 JAMES STREET, OSSINING, NEW YORK,
Respondents

M. James Spitzer, Esq., attorney for complainant-appellant in the above entitled matter has requested that the notice of appeal filed in her behalf be withdrawn. Since it appears that the granting of said request is not contrary to the public interest, the Human Rights Review Board therefore

ORDERS that the notice of appeal herein is withdrawn and the case is stricken from the calendar.

HUMAN RIGHTS REVIEW BOARD

By: J Edward Conway
J. Edward Conway, Chairman

Dated: April 30, 1969

TO:

Mrs. Rosa Bristow
Senator Hotel
Lexington Avenue
White Plains, New York

Mrs. Sid Trommer
Urban League of Westchester, Inc.
2 Grand Street
White Plains, New York

M. James Spitzer, Esq.
Scholarship, Education and
Defense Fund for Racial Equality
164 Madison Avenue
New York, New York 10016

Fair Housing Associates
c/o Mr. Milton Aronson
A & B Stationery
36 West 33rd Street
New York, New York

Daniel W. Boddie, Esq.
City Hall
New Rochelle, New York 10801
Attorney for Respondent
Fair Housing Associates

TO:

Commissioner Robert J. Mangum
N.Y.S. Division of Human Rights
270 Broadway
New York, New York 10007

Henry Spitz, Esq.
N.Y.S. Division of Human Rights
270 Broadway
New York, New York 10007

Rec'd UL 9/11/68

STATE OF NEW YORK : EXECUTIVE DEPARTMENT

DIVISION OF HUMAN RIGHTS
on the complaint of
Rosa Bristow Complainant,
against
FAIR HOUSING ASSOCIATES, INC.
Respondent.

COMPLAINT NO. III CH-

I, Rosa Bristow

residing at Senators Hotel, Lexington Avenue, White Plains Tel No.

charge Mrs. Edison, Superintendent and FAIR HOUSING ASSOCIATES

15 James Street, Ossining

Tel No. 941-4378

whose address is 15 James Street, Ossining

with an unlawful discriminatory practice relating to employment on or about

September 5, 1968

by not affording me a housing accommodation

because of my AGE ( ), RACE (X), CREED ( ), COLOR ( ), NATIONAL ORIGIN ( ), SEX ( ).

The particulars are:

On Thursday, September 5, I went to see the apartment a friend told me was vacant at 15 James Street Ossining. I was shown a 2½ room apartment, which would satisfy me until a larger apartment became available, and I filled out an application for it.

The Superintendent, Mrs. Edison, told me she would refer my application to the owner, Fair Housing Associates, and I would hear from her in about three days. She was also to contact my Welfare case worker.

To date, Tuesday, September 10th, I have heard nothing, and as of yesterday my caseworker had had no inquiry from Fair Housing Associates about me. My friend made a telephone call this morning to the Superintendent but there was no answer.

Complainant: Rosa Bristow Complaint No. CH-60-68

Respondent: Fair Housing Associates

I am a Negro and believe that I was discriminated against in securing a housing facility because of my race.

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK)
COUNTY OF) ss.

Rosa Bristow
(Signature of Complainant)

Rosa Bristow, being duly sworn, deposes and says: that She is the Complainant herein; that She has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated on information and belief; and that as to those matter She believes the same to be true.

HARRY F. ANDERSON
Notary Public, State of New York
No. 60-006846
Qualified in Westchester County
Term Expires March 30, 19 69

Subscribed and sworn to before me
this 10 day of Sept. 1968

Harry F. Anderson

Rosa Bristow
(Signature of Complainant)

Copy sent to review board

September 12, 1968

Human Rights Commission
61 Mitchell Place
White Plains, New York

ATTENTION: Mr. Harry Anderson

Dear Mr. Anderson:

On September 5th, Mrs. Rosa Bristow came to the Urban League. She was looking for an apartment for herself, her seventeen (17) year old daughter, and her seven (7) month old grand-daughter. I phoned the Fair Housing Associates who had advertised an apartment, and talked to the Super, Mr. Edison, who advised me that a two and one-half room apartment was presently available and that they take people on Welfare and that Mrs. Bristow should come over to look at it. Mrs. Bristow left immediately to look at the apartment. She talked to Mrs. Edison, not Mr. Edison. Mrs. Edison told Mrs. Bristow that she should leave an application, and asked for her Caseworker's name and phone number, realizing Mrs. Bristow is on Welfare. She promised to let her know in a couple of days.

When Mrs. Bristow did not hear from the Fair Housing Association, she contacted the Urban League once more, checking the Reporter Dispatch, the apartment was still advertised. Today, September 12th. The Case worker, Mrs. Lapitino phoned Mrs. Bristow to tell her that the Fair Housing Associates said they do not take any Welfare people anymore. Mrs. Bristow lives at the Senator Hotel. Her Caseworker feels it is urgent that the seventeen (17) year old daughter get out of this Hotel and into an apartment.

Sincerely,

Dorothea Oppenheimer
Housing

DO:a

N.B. Mrs Oppenheimer is white.

Copy sent to review board

September 13, 1968

Mr. Harry Anderson
State Division of Human Rights
61 Mitchell Place
White Plains, New York

RE: BRISTOW VS. FAIR HOUSING ASSOCIATES

Dear Mr. Anderson:

Please apply the following information to the above case of discrimination in housing.

On Thursday, September 12, 1968, a Caucasian, Mr. Currier, (telephone number 914-CR 1-4204), telephoned 914-WI 1-4378, the telephone number in the Reporter Dispatch advertising 3 1/2 and 4 1/2 room apartments for rent by Fair Housing Associates, and spoke to a woman he believed to be the Agent. She invited him to come over and inspect the 4 1/2 rooms which she had available. She advised him it made no difference that he was retired and had no income except social security.

On Thursday, September 12, 1968, at approximately 5:00 p.m., Mr. Currier visited the Rental Agent at 16 James Street, Ossining, New York. Her Husband joined them shortly. Mr. Currier was showed and offered a 4 1/2 room apartment in building number 16 on the ground floor at $175.00 a month. He was advised that it was satisfactory for his two (2) grand children to live with himself and his wife, and that a one year lease was required, with one month;s security.

We believe the above information is pertinent, inasmuch as Mrs. Bristow would be desirous of renting either a 2 1/2, 3 1/2, or a 4 1/2 room apartment, preferably 3 1/2 rooms. Also it would seem that an opportunity to rent was available to Mr. Currier, a Caucasian, although his only menas of income is dependent upon the Government, while Mrs. Bristow in similar circumstances has been told she is not eligible. No information was requested from Mr. Currier as to the amount of his income.

Also, please be advised that this building rented to welfare clients in January and February of 1968, indicating a policy of acceptance of welfare clients. A change of policy after they saw that Mrs. Bristow is Negro, would seem highly suspicious to us.

If ~~one~~ we may be of further assistance, please feel free to call upon us.

Sincerely,

Sid Trommer
Fair Housing Specialist

ST:a

SUBJECT:
BRISTOL VS FAIR HOUSING ASSOCIATES

6 Hillside Ave.
Croton-on-Hudson 10520
New York. September 13,1968

Dear Mrs Trommer:

Yesterday afternoon I went to the Eton-Court-Oxford-House Apartment Units at 15 and 16 James Street, Ossining . I asked to see a four-and-a half room apartment if one was available for rental. I was shown one at No. 16 by the young woman who answered my ring at the Suprintendent's apartment. It was onethat I may call a rear ground level--below the street-level but above ground on the river side.

The paint was in rather bad condition and she assured me it would be repainted. The rental was $175, to be paid in advance, and an equal amount was also to be paid in advance as "security." Even so, the contract would be for a one year's lease, to be renewed if desired. I asked whether , in view of my being retired and receiving social security, any preliminaries like references or a deposit even before the contract was signed , would be required. The answer was negative. I asked whether children would be accepted and was told that not more than two would be.

My friend and co-worker (Mrs. Novick) in such housing matters later told me that these apartments had originally accepted renters regardless of race because James Street, uphill from them, had a large Black community, and added that she thought it probable that the owners were now trying to build up a larger proportion of white occupants.

Raymond P. Currier.

Copy sent
to Review
Board

Sent to wrong address -
Mrs Bristow lives in
White Plains
✓ smf

September 16, 1968

Mrs. Rosa Bristow
Senator Hotel
Ossining, New York

Re. Rosa Bristow vs.
Fair Housing Associates
Milton, David and Bernard
Aronson, Partners
O/P 15 and 16 James Street
Ossining, New York
Case No. III-CH-60-68

Dear Mrs. Bristow:

A conference will be held on Thursday, September 19, 1968, at 3 p.m. at the New York State Division of Human Rights office, 61 Mitchell Place, White Plains, New York in connection with your complaint against the Fair Housing Associates.

Please attend.

Very truly yours,

Harry Anderson, Director
Region III

HA:rf

Lucile: CHANGED TO 9-25-68 4 P.M
NOTIFY COMP. & S. Trommon

R.J.

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS
61 MITCHELL PLACE, WHITE PLAINS, N. Y. 10601
WH 9-4394

ROBERT J. MANGUM
COMMISSIONER

copy sent
to rental
board

September 24, 1968

Mrs. Rosa Bristow
Senator Hotel
Lexington Avenue
White Plains, New York

Re: Rosa Bristow vs.
Fair Housing Associates
Milton, David and Bernard
Aronson, Partners, O/P
15 and 16 James Street
Ossining, New York

Dear Mrs. Bristow:

This is to advise you that a conference has been rescheduled for Wednesday, September 25, 1968, at the New York State Division for Human Rights office, 61 Mitchell Place, White Plains, New York at 4 p.m. relative to your complaint against the Fair Housing Associates.

Please attend.

Very truly yours,

Harry Anderson, Director
Region III

HA:rf

[illegible]

October 17, 1968

Mr. Harry Anderson
Regional Director
State Division on Human Rights
61 Mitchell Place
White Plains, New York 10601

RE: Bristow VS. Fairy Housing Associates
Case No. III CH-60-68

Dear Mr. Anderson:

We have today received a copy of Determination After Investigation on the above Compliant, of No Probable Cause.

This Determination is dated October 3, 1968.

Please advise what date the Determination was mailed to the Complainant in this case.

Your prompt reply would be greatly appreciated.

Sincerely yours,

Sid Trommer
Fair Housing Specialist

ST:a

CC: Mr. Robert Johnson

file
Bristow

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS
61 MITCHELL PLACE, WHITE PLAINS, N. Y. 10601
WH 9-4394

ROBERT J. MANGUM
COMMISSIONER

October 21, 1968

Mrs. Sidonia Trommer
Fair Housing Specialist
Urban League of Westchester, Inc.
2 Grand Street
White Plains, New York

Re: Eugene F. Comithier vs.
Agnes C. Borden
III CH-42-68

Re: Rosa Bristow vs.
Fair Housing Associates
III CH-60-68

Dear Mrs. Trommer:

In reference to the complaint filed by Mrs. Rosa Bristow, please be advised that the determination in this matter was prepared in this office on October 2, 1968 and sent to our New York City office for review on October 3, 1968. I understand it was mailed out from the New York City office on October 16, 1968.

15 da after serv. required

In reference to the complaint filed by Eugene F. Comithier, CH-42-68, please be advised that the respondent agreed to the terms on September 22, 1968 and a letter, with the terms enclosed, was sent to Mr. Comithier for his approval on September 23, 1968. Mr. Comithier did not respond to the letter, so on October 9, 1968 the matter was sent to our New York office for review. I understand the Order was sent out on October 16, 1968.

On No Probable Cause findings, the complainant is notified of his or her right to appeal in the final paragraph. You will note the complainant has fifteen days to appeal after the mailing of the Order.

Very truly yours,

Harry Anderson

Harry Anderson
Director
Region III

HA:hms

appeal signed & mailed 10/25/68

October 21, 1968

Human Rights Review Board
270 Broadway
New York, New York 10007

Dear Sir:

On October 17, 1968, the Urban League of Westchester received notice that my complaint of discrimination against Fair Housing Associates (Case No. III-CH-60-68) was dismissed.

I wish to appeal this order. A white person called the renting agent and was told apartments were available and welfare recipients were accepted.

I went to see the apartment, filled out an application and was subsequently turned down because I was on welfare, yet two welfare recipients have moved into the building since January 1, 1968. A white man with only a government pension was accepted for an apartment. Even though there are many Negroes living in the building, I was still discriminated against.

Rosa Bristow

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
HUMAN RIGHTS REVIEW BOARD

J. EDWARD CONWAY
CHAIRMAN

BOARD MEMBERS

Lloyd L. Hurst
Carmen Carrington Marr
Albert S. Pacetta
Irma Vidal Santaella

518 / 477-2456
State Office Bldg
Albany NY

MAR 24 1969

March 22, 1969

Re: Rosa Bristow
CH-16872-68 - Appeal No. 39

Carl Rachlin, Legal Director
S.E.D.F.
164 Madison Avenue
New York, New York 10016

Dear Mr. Rachlin:

This will acknowledge receipt of yours of March 19, 1969. The request for you and Mr. Spitzer to make an oral argument on March 27, 1969 is hereby granted.

Very truly yours,

Lloyd L Hurst
LLOYD L. HURST

LLH/rm

Mr RICHARDI's office
488 5355-6

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

26 March 1969

Lloyd L. Hurst, Esquire
State of New York
Human Rights Review Board
State Office Building
Albany, New York

RE: ROSA BRISTOW / CH-16872-68 - APPEAL NO. 39

Dear Mr. Hurst:

This is to confirm my conversation with Mr. Richardi's secretary that we have entered into an agreement with the landlord involved and in accordance with that we are withdrawing our appeal.

Yours truly,

M. James Spitzer

M. James Spitzer

/MJS

Contributions are deductible for income tax purposes

■ *president:* Andrew E. Norman ■ *vice presidents:* William S. Ellis, Nannette Sachs ■ *secretary:* Ezra Levin ■ *treasurer:* Shelley Appleton ■ *executive director:* Marvin Rich ■ *leadership development director:* Ronnie M. Moore ■ *legal director:* Carl Rachlin ■ *BOARD OF DIRECTORS:* Nils R. Douglas, *chairman* ■ James Baldwin ■ Katrina McCormick Barnes ■ Allan Barton ■ Jonathan Bingham ■ Canon James P. Breeden ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ Michael O. Finkelstein ■ Doris Freedman ■ James T. Harris, Jr. ■ Claude Heckscher ■ Norman Hill ■ Arthur Kimmelfield ■ Dr. Archie Lacey ■ Jeremy Larner ■ Joann List Levinson ■ John Lewis ■ Leon Modeste ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Edward Norton ■ Richard J. Schwartz ■ Elaine Slater ■ Rowland Watts

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
HUMAN RIGHTS REVIEW BOARD
The Governor Alfred E. Smith
State Office Building
(Temporary Address)
Albany, New York 12225
474-2456

RE: **Rosa Bristo, Complainant-Appellant vs. Fair Housing Associates, Milton, David and Bernard Arronson, Partners, Ownerw of Premises at 15 and 16 James Street, Ossining, New York**
Case No. CH-16872-68 Appeal No. 39

PLEASE TAKE NOTICE that herewith attached is the Decision and Order of the Human Rights Review Board in the above entitled matter.

[illegible] 10/11/68

DETERMINATION AFTER INVESTIGATION
Case No. III CH-60-68: Rosa Bristow vs. Fair Housing Associates

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On September 10, 1968, Rosa Bristow, who is a Negro, filed a verified complaint with the State Division of Human Rights, charging the above-named respondent with an unlawful discriminatory practice relating to housing accommodations by refusing to rent her an apartment because of her color, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights has determined that there is no probable cause to believe that the respondent has engaged or is engaging in the unlawful discriminatory practice complained of. At a conference, the complainant was given full opportunity for discussion of the above action prior to the issuance of this determination.

Upon the foregoing, the complaint is ordered dismissed and the file is closed.

The complainant, or any party to the proceeding before the Division, may appeal this order to the Human Rights Review Board, 270 Broadway, New York, N. Y. 10007, by filing a notice of appeal within fifteen (15) days after the date of the mailing of this order.

Dated: October 3, 1968

Law says "determ within 15 da after filing" —

STATE DIVISION OF HUMAN RIGHTS

By ______________________
Regional Director

546

Brooklyn Subway - Cases, 1967

State Historical Society of Wisconsin

Please Retain Original Order

Box 3
Folder

Kings 12/1/66

D5584/66

Samuel Dixon 8/18/52

Det Michael Nappo TP

XX a Transit Police Officer

XXX

1373 E NY Ave Bklyn NY 8/18/52

Jimmy & Alice (Griffin) 1373 E NY Ave Bklyn NY Parents

Nov. 30, 1966 about 3:35PM

a N. Bound West End Local Train, vicinity of 36 St & 4th Ave Bklyn NY

While acting in concert with 15 Juveniles, they did run through the train, knocking a number of passengers to the floors of the cars; they held train doors open, delaying the train; 2 of their number engaged in a fight and were joined by the rest; one of them pulled the emergency cord, causing the train to come to an emergency stop.

12/6/66
OC

Not received Jan pass.

12/27 Dyker Ht. 8th grade

Got on at 18th Ave, ~~3rd~~ 2nd or 3rd car. & walked to first car with James Lowtin. Sat down together near cop & started talking. Dowtin asked cop if he was a cop & cop said shut up. James turned to S.D. & said "see, I told you he was a cop." Saw Leopold & Carlton come to back & wrestle near seat. Gregory was trying to break it up. Girls ~~to~~ started shouting "fight". Sam got his books when the fight started before the shouting. Cop had train stopped. Other cops came in when train stopped. Cop sent some to front & some to back (girls to back). Picked out some from front & released some.

Kings 12/1/66

D5585/66

Leon Matthews 12/2/53

Det Michael Nappo TP

XXX a Transit Police Officer

XX 12/2/53

254 Ralph Ave Bklyn NY

Leon & Pearl (Barge) 254 Ralph Ave Bklyn NY Parents

Nov. 30, 1966 about 3:35PM

on a N. Bound West End Local Train, vicinity of 36 St & 4th Ave Bklyn NY

While acting in concert with 15 other Juveniles, also apprehended, they did run through the train knocking a number of passengers to the floor of the cars; they held train doors open, delaying the train; 2 od their number engaged in a fight, and were joined by the rest; one of them pulled the emergency cord causing the train to come to an emergency stop.

12/6/66
O/C

No Jail pass

12/27 – See Roger Lee 1st Car. with Richard
Got on at 18th Ave.
Best, Esther yelled fight + so did Linda + Renee
Richard Best went to back during fight but not L. Matthews

Represented by Harold Brady

12-1-66
Coover

Kings

D5573/66

Gary Smith

Det. Michael Nappo#719-Transit Police Kings County,

xx a duly authorised peace officer.

xx

810 Lafayette Ave. Bklyn. August 14th . 1953

Henrietta(Smith)	Unknown	Mother
Florence Williams	810 Lafayette Ave., Bklyn.	Pat-Aunt
David Herbert	Armed Service	Father

November 30th.1966-3:45PM

northbound westend local train-in transit between the 36th.st. and 25th.St.,Stations-

acting in concert with 15 other juveniles, also apprehended, were then on the above indicated xxxin train during which time these youths ran through the carsof this trainand indiscriminately struck other seated youths and at the 25th.St. Station the doors of the cars of this train were held open by the respondents, all of whom then engaged in a fightwith each other during the course of which one of the respondents was observed by the petitioner as he pulled the xx emergency cord of this train, thereby causing this train to come to a sudden stop.

OC
12/6/66

Kings 12/1/66

D5583/66

Gerald Shand 6/19/53

Det Michael Nappo TP

xx a Transit Police Officer

XX

304 St John's Pl Bklyn NY 6/19/53

Pearl Shand 304 St John's Pl Bklyn NY Mother

Nov. 30, 1966 about 3:35 PM

a N. Bound West End Local vicinity of 36 St & 4th Ave Bklyn NY

While acting in concert with 15 other Juveniles, also apprehended, they did run through the train knocking passengers to the floors of the cars; they held doors of the train open, delaying the train; 2 of them engaged in a fight, and were joined by the rest; one of them pulled the emergency cord, causing the train to come to an emergency stop.

12-1-66
comp

Kkings

D5578/66

Gertrude Bowman

Det. Michael Nappo#719-Transit Police Kings County,

xx a duly authorized peace officer.

fe
xx

March 4th.1952

2116 Atlantic Ave.,Bklyn.

Gergrude(Faulkner)	2116 Atlantic Ave.,Bklyn.	Mother
Stephen Bowman	Same	Father

November 30th.1966-3:45PM

northbound westend train (local)- in t ransit between the 36th. and 25th.St. Stations-

cting in concert with 15 other juveniles, also apprehended, were then in the above indicated train uring which time these youths ran through the cars of this train and indiscriminately struck other seated youths and at the 25th.St. Station the doors of the cars of this train were held open by e respondents, all of whom then engaged in a fight with each other during the course of which one f the respondents was observed by the petitioner as he pulled the emeggency cord of this train, thereby causing xxx the train to come to a sudden stop.

O/C
12/6/66

Was any person thrown as a result of S. S1

Kings

D5572/66

~~[illegible]~~
James Howlin

Det. Michael Nappo#719-Transit Police   Kings County,

xx   a duly authorized peace officer.

xx   August 29th.1952

2159 Pacific St.,Bklyn.

Betty(2159 Pacific St.,Bklyn.   Mother

November 30th.1966-3:45PM

northbound westend local-in transit between ~~x~~ 36th.St. and 25th. St~~x~~ Stations-

acting in concert with 15 other juveniles, also apprehended, were thenontheabove indicated train during which time these youths, indiscriminately struck other seated ~~xxxxxxx~~ youths after which the respondents ran through the cars of this train and at the 25th. St. Station the door of this train were unlawfully held open by these respondents who subsequently engaged ~~xxxxxx~~ each other in a fight ~~xxxx~~ during thecourse of which one of these respondents was observed by the petitioner as he willfully pulled the emeggency cord of thds train thereby causing this train to come to a sudden stop.~~xxxxxxxxxxxxxxxx~~

O/C
12/6/66

Dyker Hts. – 1st car

Got on at 18th Ave., first car. Sat down next ~~to~~ officer. Girl said "Are you a detective?" He said "shut up & sit down". Officer was reading a paper. When fight started, officer got up & ~~went~~ went to front. He knocked on door of cab. Talked to motorman. Dawtin;

25th
18th
79th St
71st St
62nd St
55th "
51st "
Ft Ham
9th Ave
36th St.

Kings 12/1/66

D5582/66

Narvin Stewart 5/11/53

Det Michael Nappo TP

xx a Transit Police Officer

XXX

177 Sands St Bklyn NY 5/11/53

Leroy & Ernestine (Brantley) 177 Sands St Bklyn NY Parents

Nov. 30, 1966 about 3:35PM

a N. Bound West End Local, vicinity of 36 St & 4th Ave Bklyn NY

While acting in concert with 15 other Juveniles, also apprehended, they did run through the train, knocking a number of passengers to the floor of the cars; they held doors of the train open, delaying the train;2 of their number engaged in a fight, and were joined by the rest; one of them pulled the emergency cord, causing the train to come to an emergency stop.

12/6/66
OC

Go to Bensonhurst J.H.S. P.S. 291
Got on at 25th Ave.

Several girls went up to cop and asked him if he was a cop. He didn't answer, but kept reading his paper. B.P. saw Carlton Pierce & Leopold Silva wrestling at rear of car. Girls yelled fight & kids moved back to watch. Girls had been playing around poles & hangers before this. Rodney went 2/3 back to see & returned to report to Marvin & Barrett that nothing was happening. Cop came forward & knocked on motorman's door & said "stop train". Other kids ran to seats & he yelled "stop where you are!" & made hand motions; Separated boys from girls. Let most of girls go through car.

Kings 12/1/66

D5581/66

Roger Lee 3/31/52

Det Michael Nappo TP

XX a Transit Police Officer

xx

353 Kings 3rd Walk Bklyn NY 3/31/52

Addie (Elin) 353 Kings 3rd Walk Bklyn NY Mother

Nov. 30, 1966 about 3:35PM

a N. Bound West End Local, vicinity of 36 St & 4th Ave Bklyn NY

While acting in concert with 15 other Juveniles, also apprehended, they did run through the train, knocking a number of passengers to the floor of the cars; they held doors of the train open, delaying the train; 2 of their number engaged in a fight, and were joined by the rest; one of them pulled the emergency cord, causing the train to come to an emergency stop.

12/6/66
OC

No Jail pass

12/27

Got on at 18th Ave. at 5th car with Leopold & walked to front. & sat down at left. Got up & walked to door at 25th St. with Leopold. Carlton came up & pushed R.L. & the L.S. into Gregory & both started wrestling. L.S. & G.P. stopped & went to back. R.L. sat down & started reading & heard girls yell fight but didn't get up. Cop ran forward & told engineer to stop train. & yelled sit down & get your books. "You with the brass buttons, come here" to Sam. "This is another one of my pet peeves." & kicked Sam. Separated boys from girls. Most of members of fights were girls. Cop told engineer to keep 1st car doors closed.

12/6/66
GG

Kings 12/1/66

D5580/66

Gregory Blake 12/13/51

Det Michael Nappo TP

xx a Transit Police Officer

752 A Madison St Bklyn NY XX 12/13/51

Lean Jackson 752 A Madison St Bklyn NY Grandmother

Nov. 30, 1966 about 3:35PM

a N. Bound West End Local vicinity of 36 St & 4th Ave Bklyn NY

While acting in concert with 15 other Juveniles, also apprehended, they did run through the train cars, knocking a number of passengers to the floor of the cars; they held doors of the train open, delaying the train;2 of their number engaged in a fight, and were joined by the rest; one of them pulled the emergency cord, causing the train to come to an emergency stop.

12/6/66
OC

12/27 Sykes Mtc. - 8th

Got on at 18th Ave. - of TT - West End Local.
Satdown on 2nd bench next to Esther. Gave his seat
to Leopold Siba & stood in front of Esther. Carlton
came over & Gregory walked toward opposite rear door.
next time he noticed Carlton & Leopold went to back
& started wrestling. They stood alone, Gregory went over to
pull Carlton off. Girls started screaming & yelling "fight."
Cop got up and walked toward front to motorman
Talked to him through open door. Train stopped &
kids ran back to seats. Cop came back through
~~Train~~ car, slapped Gregory & told him to go forward.
When train stopped other cops came in. Cop sent
kids up to front & sending girls to next car.
He told kids to hold up passes & collected them.

Kings

12-1-66
course

Barrett Parks

D5575/66

Det. Michael Nappo#719-Transit Police.

Kings County,

xx a duly authorized peace officer.

191 Sands St.,Bklyn. xx

March 28th.1953

Rosalee(Jones)
Frank Parks

191 Sands St.,Bklyn.
Deceased

Mother
Father

November 30th.1966-3:45PM

northbound westend local train- in transit between 36th.and 25th.St. Stations-

cting in concert with 15 other juveniles, also apprehended, were then on the above indicated
n during which time these youths ran through the cars of this train and indiscriminately struck c
seated youths and at the 25th.St. Station the doors of the cars of this train were held
by the respondents, all of whom then engaged in a fight with each other during the course of
one of the respondents was observed by the petitioner as he pulled the emeggency cord of this
thereb causing this train to come to a sudden stop.

O.C.
12/6/66

12-1-66
COURSA

II Kings

D5575/66

Barrett Parks

Det. Michael Nappo#719-Transit Police. Kings County,

xx a duly authorized peace officer.

xx March 28th.1953

191 Sands St., Bklyn.

Rosalee(Jones) 191 Sands St., Bklyn. Mother
Frank Parks Deceased Father

November 30th.1966-3:45PM

northbound westend local train- in transit between 36th.and 25th.St. Stations-

acting in concert with 15 other juveniles, also apprehended, were then on the above indicated xxxxx train during which time these youths ran through the cars of this train and indiscriminately struck c other seated xxx youths and at the 25th.St. Station the doors of the cars of this train were held open by the respondents, all of whom then engaged in a fight with each other during the course of which one of the respondents was observed by the petitioner as he pulled the emeggency cord of this train, thereb causing this train to come to a sudden stop.

O.C.
12/6/66

Go to Bensonhurst JHS. P.S. 291
Got on at 25th Ave.
(See Marvin Stewart)

Kings 12/1/66

Richard Best 6/9/52

D5587/66

Det Michael Nappo TP

xx a Transit Police Officer

XX

708 Kings 7th Walk Bklyn NY

6/9/52

Mary (Crosby)

708 Kings 7th Walk Bklyn NY

Mother

Nov. 30, 1966 about 3:35PM

N.Bound West End Local Train, vicinity of 36 St & 4 Ave Bklyn NY

While acting in concert with 15 other Juveniles, also apprehended, thye did run through the train knocking a number of passengers to the floor of the cars;they held doors of the train open, delaying the train; 2 of their number engaged in a fight, and were joined by the rest; one of them pulled the emergency cord, causing the train to come to an emergency stop.

12/6/66
OC

Gary Smith 14
Roger Lee – Dyker Heights J.H.S.

Davis, Cotton }
Silva, Leopold } were wrestling ~~p~~ playfully, someone yelled "fight" &

Gary jumped up to see what was happening. Cop blew whistle and other cops came. After 3 P.M., talking to Michael Jenkins (Thelma's brother). Cop not in uniform reading paper.

Nobody ~~called~~ pulled cord.

Gertrude } – I.S. 128 (J.H.S.)
Thelma } – I.S. 201 – Dyker Hts.

Cop punched J. Doughton at 84th Pct when he asked why he was arrested. Kicked Samuel Dixon.

~~Leon~~ Matthews –
Samuel Dixon –

Girls yelled "fight" – Renee Cooper
Esther
Linda

All but James Doughton

12/6/66

12-1-66
COUNCIL

Kings

D5574/66

Larry Lucas

Det. Michael Nappo#719- Transit Police   Kings County,

xx   a duly authorized peace officer.

xx   September 11th,1954

1780 Bergen St.,Bklyn.

Annie(Smith) Lucy Lucas — 1780 Bergen St.,Bklyn. — Mother

Lucy Lucas — Same — Father

November 30th,1966-3:45PM

northbound westend local train- in transit between the 36th. st. and 25th.st. Stations-

acting in concert with 15 other juveniles, also apprehended, were then on the above indicated train during which time these youths ran through this train and indiscriminately struck other seated youths and at the 25th.St. Station the doors of the cars of this train were held open by the respondents, all of whom then engaged in a fight with each other during the course of which one of the respondents was observed by the petitioner as he pulled the emergency cord of this train, thereby causing this train to come to a sudden stop.

OC
12/6/66

SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

December 22, 1966

Mr. Walter A. Hoyer
42-15 Crescent Street
Long Island City, New York

RE: Free Transit Passes For
Gary Smith and 15 Others

Dear Mr. Hoyer:

Pursuant to our conversation held this morning, I am writing to you regarding the return of the above mentioned passes. These passes were taken from the students on November 30, 1966 by a TA police officer who arrested them. Trial is set for Children's Court, Kings County, on January th. On their last appearance in court, Judge Zuckerman ordered the Clerk of the court to contact the Transit Authority requesting the passes be returned.

As the children have not been found guilty of any offense whatsoever, the refusal to return their passes is a denial of the right to due process of law not withstanding any agreement between the Board of Education and the Transit Authority. Unless passes are returned forthwith, we shall be compelled to seek a judicial remedy. As this would prove most inconvenient for all concerned, I trust that this matter can be settled at your earliest convenience.

Very truly yours,

Stephen M. Nagler
Associate Counsel

SMN:gtc
cc: Mr. Walter Schlager
N.Y.C. Transit Authority
370 Jay Street
Brooklyn, New York

Contributions are deductible for income tax purposes

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490

U. F. 49

POLICE DEPARTMENT
CITY OF NEW YORK
NEW YORK 13, N. Y.

YOUTH INVESTIGATION UNIT #10
627 GATES AVENUE
BROOKLYN, NEW YORK 11221

DEC 27, 1966

Dear Parent:

Your child, Barry Parks has been reported to the Youth Division for misconduct as indicated below. The law requires that a parent or guardian exercise reasonable diligence in the control of his child to prevent neglect or delinquency.

Therefore, we are hereby officially notifying you of your child's unlawful behavior so that you will take all steps necessary to prevent a repitition of such conduct. Your cooperation is essential if more serious problems are to be avoided.

If you require any assistance, please feel free to visit this office.

YD Case No. 6850
Referred by TRANSIT Police

Date of Offense 12/2/66 3:40 P
Address Prospect Pk. Station

OFFENSE

☐ Evading Payment of Fare
☐ Misuse of Transit Pass
☒ Disorderly on Transit Lines
☐ Smoking
☐ Using Profane Language
☐ Playing Cards or Dice
☐ Pitching Pennies
☐ Engaging in Street Trades
☐ Accidentally Breaking Windows

☐ Throwing Snowballs
☐ Opening Fire Hydrant
☐ Walking in Prohibited Areas
☐ Swimming in Prohibited Areas
☐ Bicycle Riding in Prohibited Areas
☐ Ball Playing in Prohibited Areas
☐ Disorderly in Park
☐ Other: ____________________

Very truly yours,

Polly M. Glass
Unit ~~Supervisor~~ Investigator
Youth Investigation Bureau
Unit #10

TELEPHONE
GL. 2-3030

U. F. 49

POLICE DEPARTMENT

CITY OF NEW YORK
NEW YORK 13, N. Y.

YOUTH INVESTIGATION UNIT #10
627 GATES AVENUE
BROOKLYN, NEW YORK 11221

12/6, 1966

Dear Parent:

Your child, Rodney has been reported to the Youth Division for misconduct as indicated below. The law requires that a parent or guardian exercise reasonable diligence in the control of his child to prevent neglect or delinquency.

Therefore, we are hereby officially notifying you of your child's unlawful behavior so that you will take all steps necessary to prevent a repitition of such conduct. Your cooperation is essential if more serious problems are to be avoided.

If you require any assistance, please feel free to visit this office.

YD Case No. 6382
Referred by Transit Police

Date of Offense 11/15/6
Address Sea Beach Line - 59th St Sta.

OFFENSE

☐ Evading Payment of Fare
☐ Misuse of Transit Pass
☒ Disorderly on Transit Lines
☐ Smoking
☐ Using Profane Language
☐ Playing Cards or Dice
☐ Pitching Pennies
☐ Engaging in Street Trades
☐ Accidentally Breaking Windows

☐ Throwing Snowballs
☐ Opening Fire Hydrant
☐ Walking in Prohibited Areas
☐ Swimming in Prohibited Areas
☐ Bicycle Riding in Prohibited Areas
☐ Ball Playing in Prohibited Areas
☐ Disorderly in Park
☐ Other: ______

Very truly yours,

[illegible] K. Temple
Unit Supervisor
Youth Investigation Bureau
Unit #

Witnesses

1. Renee Cooper, 14 (unwilling parents)
1387 Putnam Ave
Bklyn.
443-4843

2. Linda Green (unwilling parents) 13
484 Van Buren St.
Bklyn.

3. Michael Jenkins, 12
(Brother of Thelma).

4. Cheryl Williams, 13½
955 Green Ave.
Brooklyn

5. Esther Slade (ask Miss Coony in Dyker Hts).

[World Journal Tribune, New York, Jan 4, 1967]

Police Bring Calm To Brooklyn JHS

A picket line planned for outside Dyker Heights JHS, 8010 12th Ave., Bklyn., was abandoned yesterday by the Brooklyn Congress of Racial Equality which settled for a non-violent conference with school officials instead.

School officials took credit for the quiet solution although Sonny Carson, vice chairman of the legal defense committee of Brooklyn CORE, 448 Nostrand Ave., Bedford-Stuyvesant, said, "The Police Department community relations bureau persuaded us to confer instead of picket."

The CORE leadership and Bedford-Stuyvesant parents, however, today considered the picket line a possibility for later this week. Carson said that unless a teacher's charge of assault against one of the Negro children suspended from school is dropped, picketing will begin. Some 25 Negro open enrollment youngsters have been suspended. The teacher yesterday refused to drop the charge.

Carson said that other Negro children were "harassed."

Mrs. Madeleine D. Brennan, principal of the school, said that about 200 pupils, out of an enrollment of 1,400, were bused or subwayed to the school from Bedford-Stuyvesant every day.

She said that the "harassment" of the open-enrollment children could only refer to the arrest of 14 youngsters on the West End BMT subway line Nov. 30 for "pulling the emergency cord and disturbing the other passengers."

She said that a court hearing for the 14 pupils, including both boys and girls aged from 14 to 15, would come up tomorrow in Brooklyn Children's Court.

Carson said that when the children were arrested by Transit Authority policemen, the transit cards of the youngsters were "confiscated."

Mrs. Brennan reported that the children attended school daily during December despite the loss of their transit cards.

"Moreover," she added, "the TA gave them their January passes two days before Christmas so they are no longer inconvenienced."

The CORE decision to picket the school in order to publicize the "harassment" was announced a week ago. Carson told police officials, who arranged over the New Year's week end for a conference between Mrs. Brennan and Cornelius J. McQuillen, district superintendent, on one side, and Carson, plus Jerry Biebuld, vice chairman of CORE's school committee, and Mrs. Marion Summers, 712 Crown St., Bklyn., mother of one of the arrested children, on the other side.

The conference was scheduled for 10:30 yesterday morning.

As late as 10 a. m., Carson said, "We've got a lot of pickets waiting at CORE headquarters, ready to go. But some of the parents think we should go along with the conference idea first. The police think it can be ironed out. But I feel that nothing will come of it."

At Board of Education headquarters, officials of the Human Relations Unit said that they had no information about the scheduled conference but were leaving the problem strictly up to the district Human Relations representative. McQuillen, it was added, had not called for intervention by headquarters officials.

"But there was a lot of work done over the holiday weekend by the Police Department community relations bureau," Carson said.

After the conference, Mrs. Brennan said, "The parents will not picket. Mr. Carson asked the police to give more attention to the Lawrence St. station on the West End line where the trouble began. The police officials promised to do so. Except for the court hearing tomorrow, it's all over."

1. How many on train?
When entered?

2. When First observed kids?

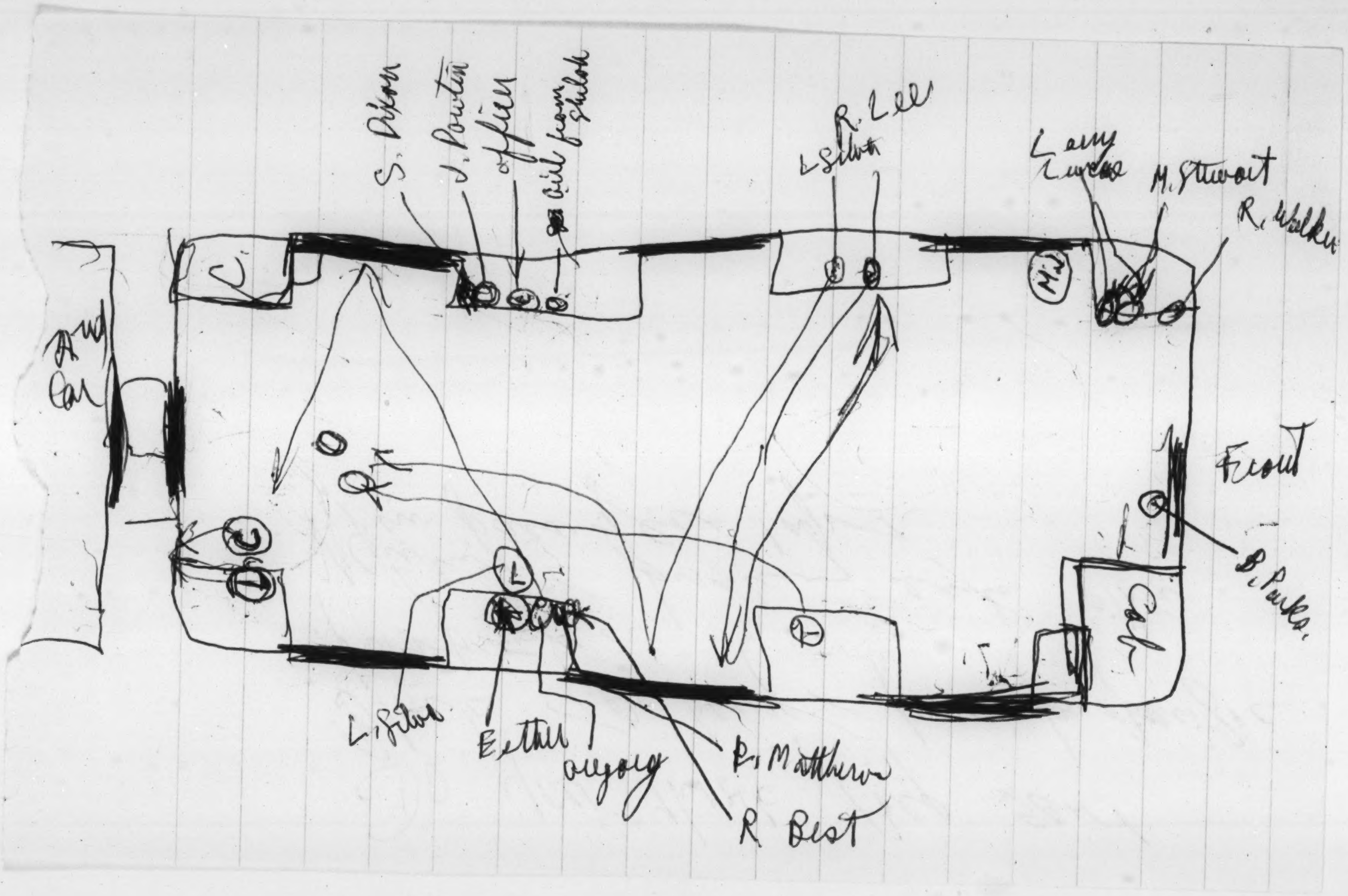
3. Know why they were on train?
Bensonhurst J.H.S. - Parks, Bowman, Stewart

4. Anyone even know anyone else?

5. Who started fight? Why?

6. Observe Nappo?

7. Discuss case w. anyone?


S. Dixon
J. Poutin
officer
Bill from Shiloh
L. Silver
R. Lee
Larry Lucas
M. Stewart
R. Walker
Mid
Add Car
C
D
C
L
Front
B. Parks
Cab
L. Silver
Ethel
R. Matthews
R. Best

①Do you think they sent
Black T.A. lawyer for a ~~po~~ specific
purpose?
Fighting c̄ pushing each other
in passengers laps

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS
- -x

PEOPLE OF THE STATE OF NEW YORK

-against-

RAPHAEL DELGADO
S-2227, 2228 defendant

- -x

JULES D. ZALON, being duly sworn, deposes and says:
That he is an attorney-at-law, and one of hte attorneys involved in the defense of the said Raphael Delgado. That on or about May 18, 1964, a bail forfeiture was ordered by the court in Prt I-B of the Criminal Court for the defendant's failure to appear.

That Mr. Delgado appeared subsequently before the said part of the Criminal Court on or about May 25, and has thereafter appeared on every adjourned date, including the present day.

That, upon/~~knowledge~~ information and belief, the bail forfeiture was ordered reinstated on May 25, 1964. However, as was thereafter discovered by your deponent, a number of other bail forfeitures have similarly been ordered reinstated, but no notice of the reinstatements has been transmitted to the District Attorney's office in charge of bail forfeitures; and these numerous bonds are therefore presently in the process of being entered for judgment, notwithstanding the subsequent reinstatements.

That, specifically with regard to the present defendant, the case is presently before the United States Circuit Court of Appeals for the Second Circuit.

That, on request to examine the defendant's complaint, your deponent was told by Mr. Julius Weinstock, Clerk to the Criminal Court, Part I-B, that the papers were taken to the office of the District Attorney's Appeals Bureau; since Mr. Ehrlich is not in his office today, and the other person in his office acquainted with these matters is also out of the office today, thereby frustrating your deponent's desire to make certain that the bail forfeiture has, in fact, been reinstated, your deponent comes before this Court without the papers necessary to prove his belief.

That, inasmuch as the bail forfeitures are about to be entered for judgment, this procedural hurdle will result in a grave injustice and hardship on the defendant, despite the defendant's constant appearance before this Court.

WHEREFORE, your deponent respectfully moves this Court to stay the entering of the bail forfeiture for judgment, and order the Clerk of this Court to transmit this notice to the appropriate office of the District Attorney, pending the examination of the complaint against the defendant, and until the papers may once again be placed before this Court.

JULES D. ZALON

Sworn to before me this
10th day of September, 1964

James E Brown
Notary Public

JAMES E. BROWN
NOTARY PUBLIC, State of New York
No. 41-5478885 Queens County
[illegible] in
[illegible] March 30, 1966

RECEIVED
DISTRICT ATTORNEY QUEENS
1964 SEP 10 PM 2:40

Criminal Court
125-01 Queens Boulevard
Kew Gardens, N.Y. 11115

1B

WTB
9/10/64

Silverberg's cases:

August 26: → received fed. ct. stay act 21?

Teahan
sabler
Kinch
Hawley
Heisler
Torgoff
Owens
Elder
Brody
Levy, Builder
Heinegg
Hardy
Crayton
Avidon
Bershad
Posner(Ida)
Covici

August 31: → act 21

all other defendants except those specifically
listed below (Sam Green not remanded)

**Margolies, Michael and Padow, Robert; part I,
Supreme, Queens indicted on Fel. Asst (McKinney)

September 10:

Delgado, R. off calendar

September 14:

Zagarell, Posner(Bruce) J. Weinstock's note of V-B

September 17:

Brezenoff, Cronick, Rice

cases to be convered for John Silverberg
April 4,22-

July 15: cases put off until july 22,29,30

July 22: all cases put off until August 31 (part I-B)
Posner, Zagarell put off until Sept. 14 (part II-B)

July 29: cases to be put off → August 26

July 30: cases to be put off (Delgado)

* * * * * * * * * * *

August 3: Ronald Coy due for P.P.I. this case was not removed; however, J.S. wants to either remove it or be adjourned pending the determination of the motion to remand made by the D.A. in Federal Court (to be heard next 8/12/64) (9-10)

August 10: Edward Smith-Green... this case was also not removed; also, however, J.S. wishes that it be adjourned pending federal court determination...or removed OFF TILL 8-31

Aug 13- Dukes - off till 8 31

Aug 26 - PT II → act 21

Aug 31 → act 21

* * * * * * * * * * *

Sept 10 - Delgado off calendar

Sept. 14: Zagarell, Posner

" 17- Bryenoff, Cromck, Rice

aug 26

Dn Zalen

JS

(Ben Monson

E.D.N.Y. - Aug 12 - adj'd till 8-17

Aug 17

Philip Kopur
4-22 W/S pt

~~[illegible]~~ Baten Dil

Bhln

8-31

Joel Hamm

all w/r
Zagarell &
Paseun

removed

~~June 17~~

Set 4 Cal
date 6-18.

Ons ct

Befcone
2 v 9
$409

6-18
Dukes
Kaplin
Flesch
Banks
cap recd
6-18

Apr. 22

110 Pet H Callender
6-18
x 6-19

removed 2 Notice
6-18

April 4
W/S pt

D Tullmen
J. Bilenlk
Isaak Brunsan
Angel O Claggenton

cap recd
6-19

Cal
Bn
Mayyou
Dodro
1-6-19 J. Urrvinlak
Enanrich
Cnata
6-18
2-6-18 Fitzgerald
Ceelda
Beralink
Kinelch
Paaser
Caree
Bakenlaam
Brezenoff
H Callender
Fenkelstein
Gilmore
Kardel
Lowrsan
Law
Mitchell
Murray
Quander
Sabler
Ahumil
Abraend

April 4
W/S pt

~~April~~ 22
Sealing cases

Fecher
Ad Hilber
(27)

cap recd
cnmct 6-19
Julius Ulmstad

6-18 removed

Paanen
Zagarell
4/22
Sealing

Sumper
Rice
Paaner
9-14
Zagarell
9-14
4-22
Salug

cap recd
6-18
J. Urrvinlak

H Callender - BF 4mm 7.20 2 cases

115

Ed Miller

April 4

Wednesday PART III

→ 4-15, 5-.-, June 18--

case called 6-18 5:00

Mrs Miller attempted to get the attention but was waived away —

Told to atty to come back in other Ct.

B. ~~tech~~ high school

~~UL 8-5~~

2 Apr

2 Aug

MR. ~~Saunders~~

Sanders -

UL 8-5150

July 8 - call back

July 15 in court -

Motion to remand

was made by D.A. of Cnty Ct 7-15-64

+ adj'd till Aug 12

28 USC 1446(e) - promptly ~~promptly~~ after the filing of such petition and bond, the pet or pets ~~shall~~ shall give written notice ~~thereof~~ thereof to all adverse parties & ~~shall~~ shall file a copy of the pet. with the cl of such state ct, which shall effect the removal & the st ct shall proceed no further unless & until the case is remanded.

Title 28, U.S.C. § 1443

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or or all persons within the jurisdiction thereof;

* * * * *

§ 1446(e):
Promptly after the filing of such petition and bond of the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall prodeed no further unless and until the case is remanded.

7-29 (F) - pt III

When 2 provs of fed law re removal were complied w/, 2 jdtn of 2 state ct ceased & that of 2 fed ct immediately attached

Nat'l Sshp Co v Tugman, 106 US 118

only pet removed
the suit removed
(st ct entered a
rem order
tho didn't need
have to

On filing of pet & bond 2 auth of 2 st ct 2 take any further proceedings in 2 case, exc 2 examine into 2 legal sufficiency of 2 removal papers, ceased, ipso facto & that of 2 fed ct attached

Sweet admin v Ch, M & St P Ry Co CC Minn
Clark, guardian 11 Fed 355

Upon 2 filing of such petition it becomes a part of 2 record, & if, on 2 face of 2 record so constituted, a suit appears 2 be removable, 2 st ct in which 2 pet is filed is bound 2 surrender its jdtn & proceed no further. Such a pet presents 2 2 © of 2 st ct a Q of law only, whether, assuming 2 facts stated in 2 petition 2 be true, 2 face of 2 record discloses a removable cause under 2 law

Donovan v Wells Fargo CCA 8th
169 F 363.

ℓ same D.A.s Office has insisted on numerous occasions, that this court should not concern itself 7 fed & const'l matters, which it is claimed, is better left to appellate courts.

P. v. 12 pickets at WF
pending J Dubin I-B

Now this same office is suggesting not only that this court examine this issue but in addition go beyond ℓ papers before it & adjudicate ℓ merits of them, which it is specifically precluded from doing

If ℓ stat req. relating 2 remand have been complied 7, ℓ st ct loses all jdx until there has been a remand

Lowe v Jacob CA5
243 F2d 432

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 3, COUNTY OF Queens DATE July 29, 1964

JUDGE Abraham Roth DIST. ATTY. COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjs.	Disposition
1.	92-63	Isiah Johnson	YO	Prob Review		
2.	222-64	Gerald McFarlin	VioProb.	Swift SenProbOff.	1	
3.	353-62	James Milnes	"	"	1	
4.	260	Salvatore Ballato	PetLarc.	Ptl. Donnelly 109Pct.		4
5.	261-64	"	Leav Scene	" "	4	
6.	948	Jermiah Teahan	1851PL.	Ptl. Faberman 110Pct.		5
7.	949	Sandra Sabler	"	"	"	
8.	958	Samuel Kinch	"	"	"	
9.	959	"	DisCon	Ptl. Kelleher 112Pct.		
10.	960	Sandra Sabler	"	"		
11.	961	Jermiah Teahan	"	"	"	
12.	1116	Ellen Hawley	1851PL.	Powers PWB.	"	
13.	1117	"	DisCom	"		
14.	1118	Robert Heisler	"	Ptl. Dimaond TA.	"	
15.	1119	"	DisCon	" "		
16.	1120	Stephen Torgoff	1851PL.	"	"	
17.	1121	"	DisCon	"	"	
18.	1122	Melvyn Owens	1851PL.	"		
19.	1123	David Elder	"	"		
20.	1124	Melvin Owens	1990-3-2	"		
21.	1125	David Elder	"	"		
22.	1126	Jermiah Teahan	1851PL.	"		
23.	1127	"	DisCon	"		
24.	1128	Mark Brody	1851PL.,	"		
25.	1129	"	DisCon	"		
26.	1130	Sandra Sabler	1851PL.	Ptl Dall TP.	"	
27.	1131	"	[illegible] 1990-3PL.	"		
28.	1132	Builder Levy	1990-3PL.	"		

All off till Aug 26—

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

BWs-stayed:

Teahan Owens
Kinch Handy

CITY OF NEW YORK

PART 3, COUNTY OF Queens DATE ~~XXX~~ July 29, 1964

JUDGE Abraham Roth DIST. ATTY. COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjs.	Disposition
29.	1133	Paul Heinogg	1990-3PL.	Ptl. Dall TP.	5	
30.	1134	Walter Hardy	"	"		
31.	1135	Walter Hardy	1851PL.	"		
32,	1136	Builder Levy	"	"		
33.	1137	Paul Heinegg	"	"		
34.	B1823-B1829	Frances Crayton	1851PL. DisCom	112Pct. PtlKelleher	6	
35.	B1824-B1830	Elaine Avidon	"	"	"	
~~XX~~ 36	B1825-B1831	Sheila Bershad	"	" "	"	
37,	B1826-B1832	Samuel Kinch	"	" "	"	
38.	B1827-B1833	Ida Posner	" "	" "	"	
39	B1828-B1834	Gerald Covici	"	"	"	
~~40XXXB18XXX~~						
40.	1360	Dan Opatoshu	2036PL.	Ptl. Puccio WorldsFair		PPI
41.	1390	"	DisCon	"	3	
42.	1392	"	PPI	Jvt Atty		
43.	1737	Samuel Kinch	1851PL.	Ptl. Kelleher 112Pct.	6	
44.	1744	Samuel Kinch	DisCom	"	"	
45.	1795	Sandra Sabler	"	"		
46.	1796	Jermiah Teahan	"	"		
47.	1846	Louis J. Adams	PPI			
48.	1969	Roy Hernandez	PPI			
49.	1970	"	PPI			
50.	2061	George Frisell	PPI			
51.	2070	Geraldine Hickman	PPI			
52.	2089	Edward Tyrrell	PPI			
53.	2169	Ronald Cicuillo	Youth Counsel		3	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

THE CITY OF NEW YORK

PART 3, COUNTY OF Queens DATE July29, 1964

JUDGE Abraham Roth DIST. ATTY. COURT REPORTER

Cal No.	Docket Number	Name of Defendant	Charge	Officer & assign.	prev. adjs.	Disposition
54.	2269	Ruthlema Thomas	PetLarc	Ptl. Connery YPUQ	1	
55.	2270	Patrcia Little	"	"		
56.						
56.	2316	Willie Pendergrass	Fel. Asslt	Ptl. Perkins 105Pct.	2	
57	2317	Charles Sherman	"	"		
58.	3385	William Pendarvis	Sodomy	Det. Holahan 109Sq.	1	
59.	Y0594	Wilfred Blanchard	Yo Sentence	1		
60.	1519	Willia m Lee	1747DP.	Invest Report	6	
61	1730	Jackie Cooper	AttPetLarc.	Record Sent.	3	
			To Pay Fine			
62.	1762	Hugh Kerney	Fail To obey Sig Lt.	$5.00		
63.	1763	"	UnReg Veh	$20.00 or Three		Days
64.	1764	" "	UnLicOper	$20.00 or Three Days.		

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Subway cases   John Silverberg

1. Banks, Gilbert	319 Nostrand Av. Bkln DC, 1851	32210,11	6/8
2. Brody, Mark	111-31 77 Av. Forest Hills DC, 1851, 1990	1128,29	6/17
3. Callender, Herbert	755 E 168 St. Bnx DC, 1851	B2235,34	6/8
4. Chernowitz, Alex	85 Chrystie St. NYC DC, 1851, Fel Asst	1138, 1200, 1201	6/4
5. Coplin, Philip	279 Henry St NYC DC		5/26
6. Delgado, Raphael A/	210 W 102 St NYC DC, 1851	B2227,28	5/18
7. Dukes, Nelson C.	3039 Edson Av, Bnx DC	B2206	5/18
8. Elder, David	76 Clifton Pl, Bkln DC, 1851, 1990	1123,25	6/17 W
9. Eolis, Sharon	261 W. 22 St NYC DC, 1851	1229,30	6/24
10.Flesch, Walter	527 E 12 NYC DC, 1851	B2208,09	6/2
11.Hardy, Walter	426 Baltic St DC, 1851, 1990	1134,35	6/4
12.Halley, Ellen	10 Pershing Av Ynkrs DC, 1851	1116,17	6/12
13.Heinegg, Paul	151 Midwood Av, Bkln DC, 1851	1133,37	6/4
14.Heisler, Robt	3477 Corsa Av, Bnx DC, 1851, 1990	1118,18	6/17
15.Levy, Builder	239 Bay 22d St. Bkln DC	1132	6/4
16.Margolies, Michael	177 Ludlow St NYC DC, 1851, Fel Asst		5/21
17. Nappes, Marjorie	178 Amity Bkln DC, 1851, 1990	B2214, 13,15	6/2
18.Owens, Melvin	11 W 121 St NYC DC, 1851, 1990	1122,24	6/17 W
19.Posner, Bruce	15 8th Av, Bkln DC, 1851, 1990	B2219, 20,21	6/9
20.Padow, Robt	215 W 23 St NYC DC, 1851, Fel Asst		5/21,25

21.Sabler, Sandra	3025 W 34 St Bkln DC, 1851, 1990	1130,31	6/17
22.Rice, Kenneth	193 Grafton St, Bkln DC, 1851,1990	B2216,17,18	6/2
23.Teahan, Jeremiah	90-08 Flatlands Av Bkln DC, 1851,1990	1126,27	6/17
24.Torgoff,Stephen	290 West En dAv NYC DC, 1851, 1990	1120,21	6/17
25.Zagarell, Michael	1246 Morris Av Bnx DC, 1851, 1990	B2222,3,4	6/9
Batchelor, Wm			W
Budde man, Geo			W
Dickson, John	104-30 203 St Hollis		5/22
Epstein, Howard	48-29 190 St, Flushing		5/22
Farmain, Bahman	104 York Sq,New Haven, Conn		5/22
Kalimtgis, Gus	88-10 139 St, Jamaica		5/22
Lloyd, Robert	34-25 W. Monroe, Chicago		5/22
Peters, Steven	141-19 71 Rd, Flushing		5/22
Rubin, Martin	33-05 90 St, Jackson Hts		5/22
Mapp, Thomas	164-32 109th Rd Jamaica		5/22
Smith-Green, Ed.	5808 Farragut Rd. Bkln		5/22